81-147

No.

Office-Supreme Court, U.S.
FILED
JUL 24 1981
ALEXANDER L. STEVAS,
CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1981

In Re ANABEL J. McCUTCHEON,

Petitioner,

vs.

THE BOARD OF EDUCATION, CITY OF CHICAGO, MRS. CAREY B. PRESTON, MICHAEL J. MURRAY, EARL B. HOFFENBERG, JOSEPH P. HANNON, WILLIAM ROHAN, GERARD J. HEING, MARIO GAROFALO,

Respondents.

Appeal from the United States Court of Appeals for the Seventh Circuit

Judge ROBERT A. SPRECHER
Judge HARLINGTON WOOD
Judge RICHARD D. CUDAHY
Judge WALTER CUMMINGS
Judge WILLIAM BAUER

PETITION FOR AN EXTRAORDINARY WRIT OR IN THE ALTERNATE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ANABEL J. McCUTCHEON, *Pro Se*
Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

The Scheffer Press, Inc.—(312) 263-6850

Oral Argument Requested

QUESTIONS PRESENTED FOR REVIEW

I Whether a March 26, 1981 irrelevant decision of the Illinois (State) Appellate Court on Appeal to the Illinois Supreme Court has been prejudicially substituted by the (Federal) Seventh Circuit Court of Appeals for the Judgment Order, 78-3899 and 16 trial court transcripts [Nov 1, 1978-Nov. 30, 1979] records detrimental to Defendants made in the United States District Court of Judge Leighton.

II Whether the Seventh Circuit Court of Appeals, after three years' receipt of "ex parte" communications from Defendants, denied non-attorney due process and equal representation by summarily denying her the public record, a public jury trial, a Change of Venue, Disqualification of Judges Bauer, Cummings, and by rendering an "Unpublished Order Per Curiam" via mail.

III Whether the Chicago Appellate Courts failed to recognize that the Statute for "Removal for Cause—Notice and Hearing—Suspension" [Ill. Rev. Stat., 1975: #34-85] relied upon by Defendants is discriminatory and unconstitutional for the reason that it permits the same (lay) persons [Chicago Board of Education—District of over 500,000 inhabitants] to bring charges and then sit in judgment on those charges, without an independent hearing officer required of other Illinois School Districts in the dismissal of Tenured Personnel.

In Re: Question III—Approved by Defunct Board date April 24, 1974

74-389

PROPOSAL SUBMISSION: *AUDUBON ECOLOGY CENTER*

RECOMMENDATION:

Ratify submission of an *Audubon Ecology Center,* a proposal for government funding. A copy of the proposal is on file in the Office of the Secretary.

DESCRIPTION:

This proposal would establish an ecology center at the John J. Audubon School to serve the school and community. The proposed program offers opportunities for seven weeks of the summer for study and exploration by teachers, students, and community residents to understand the effects of environment upon people, plants, and animals and their system of ecological interdependence.

SUPPORTIVE DATA:

The successful implementation of some of the social studies, science ecology units, grades kindergarten through eight, developed from the Chicago Curriculum Guides by the Audubon Teacher-librarian emphasized the need for studies in greater depth by teachers to increase the academic excellence of the average above average children—and the need for advanced texts, materials. The success of the Forest Preserve District of Cook County Workshops in Conservation, which were attended by four Audubon teachers and principal emphasized the need for in-service training of all teachers in basic conservation and the need for more varied methods and materials for the improvement of the basic skills of under achievers.

On one-third of the school grounds is an old established lawn (now deteriorated) with several established trees. A scale drawing has been made by the seventh grade accelerated math class to plan for restoration of this lawn.

FINANCIAL:

No additional cost to the Board of Education. Funds in the amount of $28,925.00 will initially be sought from Funding Sources.

Respectfully submitted,

JAMES F. REDMOND
General Superintendent of Schools

Prepared by:

ANABEL J. McCUTCHEON, Principal, John J. Audubon School

Approved by:

Dr. Bessie Lawrence, Superintendent District 7 (Alternate District 3)
Dr. Angeline Caruso, Associate Superintendent, Area C

JAMES G. MOFFAT, Assistant Superintendent, Government Funded Programs

MANFORD BYRD, JR., Deputy Superintendent of Schools

Noted:

ROBERT STICKLES, CONTROLLER

(Same Persons Bringing Suspension-Dismissal Charges, Sept. 7, 1976)

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No.

In Re ANABEL J. McCUTCHEON,

Petitioner,

vs.

THE BOARD OF EDUCATION, CITY OF CHICAGO, MRS. CAREY B. PRESTON, MICHAEL J. MURRAY, EARL B. HOFFENBERG, JOSEPH P. HANNON, WILLIAM ROHAN, GERARD J. HEING, MARIO GAROFALO,

Respondents.

Appeal from the United States Court of Appeals for the Seventh Circuit

Judge ROBERT A. SPRECHER
Judge HARLINGTON WOOD
Judge RICHARD D. CUDAHY
Judge WALTER CUMMINGS
Judge WILLIAM BAUER

PETITION FOR AN EXTRAORDINARY WRIT OR IN THE ALTERNATE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OPINIONS BELOW

1. The Sua Sponte Order substituting the state court decision for the federal court record detrimental to Defendants was rendered on April 21, 1981 unpublished and appears in App. "A", p. 1a.

2. The Sua Sponte Order (made "ex parte" with Defendants . . . "It is suggested . . .") was rendered on Sept. 18, 1980 and appears in App. "A-1", p. 2a.

No decision was rendered or consideration made of the response of non-attorney Petitioner.

3. The Ruling of Judge William J. Bauer, denying Petitioner the only true record of the Court, Nov. 1, 1978-Nov. 30, 1979 was rendered on March 13, 1980 and appears in Appendix "B", p. 3a.

4. The Ruling of Judge William J. Bauer, supporting the improper procedures of Defendant Attorney Paul H. Heineke was made on March 13, 1980 and appears in Appendix "B-1", p. 5a.

5. The Ruling of Judge William J. Bauer, supporting the loss and continued denial of the Public Court Reporter's Record—the 4th bound volume and other records detrimental to former City of Chicago Corporation Counsel was rendered on April 3, 1980 and appears in Appendix "B-2", p. 6a.

6. Plaintiff's Petition For a Change of Venue to Springfield, Ill. . . . or to Disqualify Judge Walter Cummings was filed on May 11, 1981 and appears in Appendix "C", p. 8a.

7. The "Unpublished Order in Curiam" was rendered on June 25, 1981 and appears in Appendix "D", p. 13a.

8. The March 26, 1981 decision of the Illinois Appellate Court, reviewed by the "Unpublished Order in Curiam" is published in the Illinois Appellate Court Record.

JURISDICTION

Jurisdiction is invoked for a Writ of Extraordinaire in accordance with 28 U.S.C. §1651 Writs and §1652 Judicial Procedure:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

in appeal of the Sua Sponte Order, April 21, 1981 [App. "A", p. 1a] and the "Unpublished Order per Curiam". June 25, 1981 [App. "D", p. 13a] for the reason that the federal Seventh Circuit Court of Appeals has no appellate court jurisdiction over the state courts involved in a "Complaint for Administrative Review" under the Illinois Administrative Review Act. Ill. Rev. Stat. 1975 110: §267.

Notice of Appeal was filed July 17, 1981.

Original jurisdiction is set forth in the Brief and Argument for Appellant, pages 3, 4 accompanying this Petition. Appellate Jurisdiction, p. 8.

Jurisdiction is sought for a petition of certiorari pursuant to 28 U.S.C. 2202 (1970):

> "Further necessary or proper relief based on a declaratory judgment or degree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V: Guaranty of Trial By Jury; Private Property Respected:

> " 'nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor

be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

U.S. Constitution, Amendment VI: Rights of Accused Persons

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor,—and to have the assistance of counsel for his defense.

U.S. Constitution, Amendment XIV: Definition of Citizenship

"nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

U.S. Constitution, Amendment I: Freedom of Religion, Speech

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of Grievances."

ILLINOIS STATUTES

Ill. Rev. Stat., 1975 Rev.: Chap. 122 §34-85: "Removal for Cause—Notice and Hearing—Suspension:

No teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34—84) be removed ex-

cept for cause, and then only by a vote of a majority of all members of the board, upon written charges presented by the general superintendent of schools, to be heard by the board or a duly authorized committee thereof. Written notice of such charges shall be served upon the teacher or principal not less than 20 nor more than 30 days before the date of hearing. The hearing shall be held and the decision rendered within 80 days from the date of service of the notice; provided however, that continuances of said hearing granted at the request of the teacher or principal shall not be included in computing this 80 day period. The hearing shall be public at the request of either the teacher or the board. The teacher shall have the privilege of being present at the hearing, together with counsel, offering evidence and making defense to the charges. Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher shall be given reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges. The action and decision of the board as to the existence of reasons or causes for dismissal or removal shall be final unless reviewed as provided in Section 34-85b of this Act. Pending the hearing of the charges, the person charged may be suspended in accordance with rules prescribed by the board but such person, if acquitted, shall not suffer any loss of salary by reason of the suspension. As amended by act approved Aug. 26, 1963.

STATEMENT OF FACTS

1. Sept. 29, 1978: #78-3899 U.S.D.C. was filed by non-attorney Plaintiff and assigned to Judge John Grady.

2. Oct. 16, 1978 Private Attorneys, who had filed no appearances for Defendants solicited the consolidation (from H. Stuart Cunningham, Clerk of the Court) of this cause with a Dec. 28, 1976 Title VII for which they had no public contract (Right To Defend) the Board of Education,

City of Chicago. [Admitted by Defendant Attorneys, Murray, Heineke, Brown, Zielinski in reply brief, Nov. 28, 1980: p. 5, #80-724 U.S. Supreme Court]

3. Oct. 20, 1978 These letters were sent "ex parte" to Judge Grady, Marshall, Leighton by Nina Cunningham, Administrative Assistant to H. Stuart Cunningham, [p. 27a] without any notice or copy to Plaintiff, who discovered them hidden in the files she first saw, January 29, 1981,

4. Nov. 1, 1978 Judge John Grady ordered Defendant Attorney Paul Heineke to show cause why he was soliciting this consolidation from the Clerk of the Court and Judges "ex parte". [Disputed Transcript Record, Nov. 1, 1978 Refused To Be Certified To The Seventh Circuit and U.S. Supreme Court by H. Stuart Cunningham]

5. Nov. 3, 1978 Judge Leighton consolidated this cause and two others after dismissing Plaintiff's Attorneys before trial; denying her the Court Record (denied her by H. Stuart Cunningham); denying her any discovery in this cause; and subsequently denying her a Public Jury Trial because this cause was consolidated with a Title VII. [Disputed Transcript Record, Nov. 3, 1978 Refused To Be Certified To The Seventh Circuit and U.S. Supreme Court by H. Stuart Cunningham]

6. Nov. 9, 1978 Judge James B. Parsons issued the executive order of transfer Ipso Post Facto the consolidation "take-over" by Judge George N. Leighton.

7. Nov. 20, 1978 "E. Dinger" [p. 31a] (the latter identified as a Deputy Clerk, subordinate to H. Stuart Cunningham) submitted an opinion "ex parte" to the Appellate Court Judges Walter Cummings, William Bauer, Robert A. Sprecher, Harlington Wood of an alleged "Interlocutory Appeal" Before Any Notice Of Appeal,

Nov. 24, 1978. Said false opinion contained the 7th Circuit Court Number, not assigned until Dec., 1978 and was discovered hidden in all Four Files of Plaintiff, Jan. 29, 1981 with corresponding appeal numbers—two others not being filed until after this letter (obviously Back-Dated).

8. Jan-March 1979 Denial of Appeals of Wrongful Consolidation by Judge George N. Leighton on alleged "interlocutory-non-jurisdictional" defense by Defendant Attorneys, who had altered the records.

Items #2, #3, and #7 have been encompassed in the complaint against H. Stuart Cunningham, Charlie Webb, Deputy Clerk of the 7th Circuit: [81 C 686, 81 C 1143]. That the judgment appealed was rendered immediately following Plaintiff's Motion for Default in the U.S. District Court and the presentation of all documentary evidence.

9. Nov. 24, 1979 Bankruptcy of the Board of Education, City of Chicago caused by the specific Defendants named herein.

10. Nov. 30, 1979 Decision and "Unconsolidation of 78 C 3899 by Judge George N. Leighton Via Mail.

11. Jan 16, 1980 Establishment of the Legislative Act, #81-1221 [p. 10] creating the Chicago School Finance Authority and Dismissing specific Defendants on May 1, 1980 for misuse of funds, personnel: specifically entering new paragraphs into Chapter 122 [School Law] *Sanctions,* restricting The Attorney For The Board, Michael J. Murray From Making Any Contracts With Private Law Firms Or Individuals, Thomas Brown, Paul Heineke without statutory authority.

QUESTIONS ON APPEAL BEFORE THE SEVENTH CIRCUIT

1. Whether the Defendants deprived Plaintiff of a Means of a Livelihood and her constitutional rights of due process by disregarding the Tenure Laws. "Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois" [Pamphlet Reproduced by the Appellant].

2. Whether the Plaintiff was deprived of her constitutional rights under the First and Fourteenth Amendment of personal liberty and due process: to a private hearing under the Illinois Revised Statutes, Chap. 122: 34-85.

3. Whether the Plaintiff was deprived of her constitutional rights under the Fifth, Sixth, and Fourteenth Amendments by being prosecuted on criminal charges [#1, #3, #5] in an administrative hearing.

4. Whether the Plaintiff was denied her constitutional rights under the First and Fourteenth Amendments of the United States Constitution to criticize the Board and Defendant Joseph P. Hannon on Nov. 10, 1975.

5. Whether the Court of Judge Leighton had jurisdiction to consolidate this cause with a Title VII four-year old complaint on Nov. 3, 1978 and the authority to deny Plaintiff a public jury trial by reason of this consolidation [Transcript, Jan. 19, 1979.]

6. Whether the Nov. 3, 1978 "order of reassignment from Grady to Leighton" docketed Nov. 14, 1978, was a valid order of Judge Grady.

7. Whether the Court erred in dismissing William Rohan, leaving his name out of the Judgment Order (3899).

8. Whether the Court erred in dismissing all Defendants for alleged immunity as acting in a "quasi-judicial" capacity.

9. Whether the Defendant Attorneys have the statutory authority to represent employees Hannon, Heing, Rohan, Garofalo; and whether they have the statutory authority to represent the Defunct Board of Education on appeal without a public contract [Ill. Rev. Stat., 1975, 122: 34-49]

REASONS FOR GRANTING THIS PETITION

Comes Now the Petitioner, Anabel J. McCutcheon, *Pro Se,* to petition this Honorable Court for a Writ of Mandamus to the Seventh Circuit Court of Appeals in 79-2568 *McCutcheon* v. *The Board of Education,* City of Chicago to enter 16 trial court transcripts, Nov. 1, 1978-Nov. 30, 1979, other pertinent records detrimental to Defendants as the only true record in this cause and to strike or prohibit the entry of the "Unpublished Order Per Curiam" and grant Petitioner the relief requested.

Petitioner also seeks a Writ of Prohibition against the Clerk of the U.S. Seventh Circuit Court of Appeals from entering any "taxation of costs" for private attorneys Paul H. Heineke, Thomas Brown on behalf of the Board of Education, City of Chicago until said attorneys present certified Proof that they are authorized to collect for the Defunct Board of Education, City of Chicago—ex members, ex employees, 1976-1981 responsible for the $550,000,000 bankruptcy, November, 1979 under the new State Statute: P.A. 81-1221

Sanctions:

> (Ch. 122, new par. 34A-608) [S.H.A. ch. 122, ¶ 34A-608]
>
> Sec. 34A-608. Sanctions. (a) No member, officer, employee, or agent of the Board shall commit the Board to any contract or other obligation or incur any liability on behalf of the Board for any purpose if the amount of such contract, obligation or liability is in excess of the amount authorized for that purpose then available under the Financial Plan and Budget then in effect.

(b) No member, officer, employee, or agent of the Board shall commit the Board to any contract or other obligation on behalf of the Board for the payment of money for any purpose required to be approved by the Authority unless such contract or other obligation has been approved by the Authority.

(c) No member, officer, employee, or agent of the Board shall take any action in violation of any valid order of the Authority or shall fail or refuse to take any action required by any such order or shall prepare, present, or certify any information (including any projections or estimates) or report for the Authority or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, shall fail promptly to advise the Authority or its agents.

(d) In addition to any penalty or liability under any other law, any member, officer, employee, or agent of the Board who shall violate subsections (a), (b), or (c) of this Section shall be subject to appropriate administrative discipline, including, if warranted, suspension from duty without pay or removal from office as provided by law.

Section 2. This Act takes effect upon its becoming a law. [S.H.A. ch. 122, ¶ 18-8 note]

Approved: January 16, 1980 Effective: January 16, 1980

The Seventh Circuit Court of Appeals failed to rule on the Statutory Authority of these private attorneys to represent Defendants after their insurance contract had expired December, 1975 because Judge Leighton had permitted them to do so.

Petitioner seeks a Writ Extraordinaire for the extraordinary circumstances of suppression of the true record of the criminal misuse of public funds, personnel by Defendants Board of Education, City of Chicago by former City of Chicago Corporation Counsels: Judge George N. Leighton, Paul H. Heineke, Thomas Brown

and the rulings in their favor by Seventh Circuit Court Judge Walter J. Cummings, whose wife is on the City of Chicago Payroll with no visible duties—and has been for the same period of time of his single rulings in favor of the former City of Chicago Corporation Counsel, April, 1979-to date.

For the extraordinary circumstances of an "ex parte" agreement with Defendant Appellees only [April 21, 1981, App. "A", p. 1a] to strike the federal record and rule on the state court decision without jurisdiction and the three-year receipt of "ex parte" communications from Defendants by specific Judges Robert A. Sprecher, Harlington Wood, William Bauer, Walter Cummings [App. "E-1", p. 37a].

For the extraordinary circumstances that these specific Defendants were fired by the Illinois State Legislature and such firing was upheld by the Illinois Supreme Court [*Polich* v. *Chicago Finance Authority,* 79 Ill. 2d. 188] for the specific crimes of misuse of funds, personnel for the same time period, Nov. 1, 1978-Nov. 30, 1979 of this complaint.

For the extraordinary circumstances that the Chicago Appellate Courts failed to recognize that the Statute for "Removal for Cause—Notice and Hearing—Suspension" [Ill. Rev. Stat., 1975: #34-85] is discriminatory and unconstitutional for the reason that it permits the same (lay) persons [Chicago Board of Education—District of over 500,000 inhabitants] to bring charges (Sept. 16, 1976) after declaring her "guilty" (irremediable) on Sept. 7, 1976 and then sit in judgment on those charges. (Oct. 6, 1976—Oct. 5, 1977) in a Kangaroo Court in which no rulings were made against themselves.

In this specific cause the Chicago Appellate Courts with the record placed before them in her briefs permitted

these same lay persons' Defendants, to bring two criminal charges against Plaintiff, of which Petitioner was acquitted before an administrative hearing without regard for her constitutional rights guaranteed by the Sixth amendment: permitted these lay persons without authority or jurisdiction to confiscate her property and liberty rights guaranteed by the First and Fifth amendments.

For the above reasons, the decision should be reversed in its entirety and all Defendants held for costs, social, punitive, and emotional damages.

Respectfully submitted,

ANABEL J. MCCUTCHEON, *Pro Se*
Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition for a Writ Extraordinaire and Certiorari were sent to the Seventh Circuit Court of Appeals, former City of Chicago Corporation Counsel Paul H. Heineke, Thomas Brown and the Attorney for The Board of Education. City of Chicago, representing the Defunct Board of Education and ex-employees and ex-members in this three-year appeal. That aforementioned copies were sent by first class mail, postage prepaid on July 23, 1981.

/s/ Anabel J. McCutcheon
Anabel J. McCutcheon

Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

APPENDIX I

APPENDIX A

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

April 21, 1981

By the Court:

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
GEORGE N. LEIGHTON, *Judge*.

On consideration of the "Motion To Supplement Record On Appeal" filed herein on March 31, 1981 by counsel for the defendants-appellees,

It Is Ordered that said motion is hereby Denied as moot since counsel for the defendants-appellees have been advised and agreed to submit the opinion of the Illinois Appellate Court as a citation of additional authority in accordance with Circuit Rule 11.

APPENDIX A-1

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

September 18, 1980

By the Court:

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
Hon. GEORGE N. LEIGHTON, *Judge*.

NOTICE

It has been suggested that oral argument may not be helpful in deciding this case. If there is no oral argument, a panel of three judges will decide this case on the basis of the briefs and record. Within fourteen days of the date of this Notice any party to this appeal may file with the Clerk an original and three copies of a "Statement As To Need Of Oral Argument," suggesting reasons why oral argument may be necessary for proper resolution of the issues presented. Such statement will be considered, but oral argument may or may not be granted. See Rule 34 of the Federal Rules of Appellate Procedure and Rule 14(f) of the Circuit Rules of the Seventh Circuit.

APPENDIX B

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

March 13, 1980

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. .....
Hon. .....

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
GEORGE N. LEIGHTON, *Judge.*

This matter comes before the court upon the filing herein of the following documents:

1. "Plaintiff's Motion To Strike The Consolidated Record: To Reconstruct The Single File Of 78 C 3899 As Per Plaintiff's Four Bound Volumes Submitted; And To Continue This Case Until The Record Is Reconstructed" filed herein on February 22, 1980.
2. "Response" filed herein on March 6, 1980 by counsel for the defendants-appellees.

Pro se appellant requests this court to strike the record in this appeal and to "reconstruct the single file in accordance with the November 30, 1979 order (Vol. II, p. 215) of Judge Leighton vacating consideration and the December 7, 1979 ruling (Vol. II p. 217) denying rehearing to file an amended consolidated complaint instanter." On consideration whereof,

It Is Ordered that plaintiff's motion is hereby Denied.

Because there is no basis for believing that this appeal record was collected impermissibly by the district court clerk or that any of the documents were tampered with,

It Is Ordered that pro se appellant has failed to sustain her burden in justifying modification of the record or the disciplining of court personnel and therefore the motion is Denied.

APPENDIX B-1

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

March 17, 1980

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. .....
Hon. .....

No. 79-2568

ANABEL J. McCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
GEORGE N. LEIGHTON, *Judge.*

On consideration of the "Plaintiff-Appellant's Motion To Dismiss With Prejudice Defendant Attorney, Paul H. Heineke As Unqualified Under The Circuit Court Rule 5" filed herein on March 5, 1980,

It Is Ordered that said motion is hereby Denied.

APPENDIX B-2

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

April 3, 1980

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
Judge GEORGE N. LEIGHTON

This matter comes before the court for its consideration upon the following documents:

1. The "Plaintiff-Appellant's Motion For Reconsideration Of The Denial Order" filed herein on March 26, 1980, by the pro se plaintiff-appellant.

2. The "Request For Fourth Bound Volume Of Transcript" filed herein on March 26, 1980, by the pro se plaintiff-appellant.

3. The "Plaintiff's Motion To Certify A Question To The Illinois Supreme Court Of The Authority Of Four Defendant Attorneys To Represent Defendants" filed herein on March 26, 1980.

4. The "Response To Plaintiff-Appellant's Motion For Reconsideration Of The Denial Order" filed herein on April 2, 1980.

5. The "Response To Request For Fourth Bound Volume Of Transcript" filed herein on April 2, 1980, by counsel for the defendants-appellees.

6. The "Response To Plaintiff's Motion To Certify A Question To The Illinois Supreme Court Of The Authority Of Four Defendants' Attorneys To Represent Defendants" filed herein on April 2, 1980, by counsel for the defendants-appellees.

On consideration whereof,

It Is Ordered that the motion for reconsideration of this court's order of March 17, 1980, be, and the same is hereby Denied.

It Is Further Ordered that the request for the bound volume of transcripts be, and the same is hereby Denied. A member of the staff of this court sent all of the material submitted back to the plaintiff-appellant, and none of this material remains in custody of the court.

It Is Also Further Ordered that the request to certify a question to the Illinois Supreme Court be, and the same is hereby Denied.

APPENDIX C

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,
WILLIAM ROHAN, Et. Al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 78 C 3899 Wrongful Dismissal by Kangaroo Court of Fabricated Charges

Judge JOHN GRADY
Judge GEORGE N. LEIGHTON

PETITION FOR A CHANGE OF VENUE TO SPRINGFIELD, ILLINOIS OR IN THE ALTERNATE A MOTION TO DISQUALIFY JUDGE WALTER CUMMINGS AND OTHERS ACTING IN CONJUNCTION WITH HIM ON THE GROUNDS OF PREJUDICE

Now Comes the Plaintiff to petition this Honorable Court for a change of venue outside the City of Chicago or in the alternate to move to disqualify Judge Walter Cummings and others acting in conjunction with him on the grounds of prejudice, hostility towards a non-attorney Plaintiff, who is not only suing the Board Of Education, City Of Chicago, but has also brought evidence in all four wrongly consolidated cases of misuse of state and federal funds by Defendants, the specific defendants who have failed to account for $550,000,000 bankruptcy funds since November, 1979.

In an unfair and biased manner this Court has established a privileged class of Defendants Board Of Education, and Defendant Attorneys Michael J. Murray (brother of a Chicago Judge), Paul Heineke, Thomas Brown, private attorneys who allege to be City of Chicago Corporation Counsels and are politically affiliated with the former City Corporation Counsels, Judges Richard L. Curry and George N. Leighton, before whom they "maneuvered" Plaintiff's wrongful dismissal. That both Judges improperly dismissed her attorneys before trial without granting her the Court Record, discovery, a public speedy hearing or a trial—and a two year delay has been upheld by the Courts at every level—State and Federal: forcing her to go *Pro Se* in competition with private attorneys, hired "under the counter" at approximately $100,000 per year.

Prejudicially, following Defendants' "ex parte" communications with Judge George N. Leighton, Grady, Marshall—and supported by Nina Cunningham, E. Dinger, subordinates of H. Stuart Cunningham, Clerk of the U.S. District Court: Judge Leighton "took over" by sheer force on Nov. 3, 1978 and consolidated this complaint without jurisdiction.

That the 14 pre-trial transcripts of this prejudicial "take-over" were denied by this Court when H. Stuart Cunningham and his subordinates refused to admit same in violation of the Court Rules (4). That the Honorable Justice William Bauer failed to give equal consideration to the motions of Plaintiff for the admission of this reconstructed record—after it was "lost" by Deputy Clerk, Charlie Webb. That said Clerk was granted "special" consideration without a sworn affidavit when he alleged that he had returned it: and the evidence of Plaintiff was not even considered—nor was she allowed a "briefing" or "extension of time" to bring this record before the Court.

That in an unfair and biased manner this Court issued a "sua sponte" order on September 18, 1980 to aid Defen-

dant Attorneys Without Statutory Authority To Be In Any Courtroom In Defense Of Defendant Board: "It has been suggested that oral argument may not be helpful in deciding this case (again the suppression of a public trial against defendants) . . . a panel of three Judges will decide this case on the basis of the briefs (of a non-attorney vs. attorneys) and the record (already denied). That the "it is suggested . . ." again indicates "ex parte" communications by Attorney Paul Heineke to suppress the record withheld from the Court of Judge Leighton, 1976-1979 and from this Court of Appeals, 1979-1981 by H. Stuart Cunningham, politically affiliated with Defendants and certain Judges, George N. Leighton, Walter Cummings, and Richard L. Curry. The suppression of the record of the overpayment of salary to male principal, Karl Siewers and the firing of plaintiff for the same period of time: That the Union represented him, not her and was dismissed without public hearing, trial by Judge Leighton.

That the Honorable Justice Walter Cummings prejudicially failed to brief non-attorney's motions, but briefed the above motion—failed to consider or support the new statute, effective after this suit was filed: Ill. Rev. Stat., 1975, chap 122, new par. 34A-608 Sanctions and prejudicially permits these private attorneys to practice and distort the record without statutory authority. By their own admission, that they have no public contract to represent the Board since April, 1976.

That Justice Mrs. Walter Cummings holds a politically appointed job with the City Of Chicago at a yearly salary of $34,000 by the political appointment of Mayor Jane Byrne: Notwithstanding That Fact Justice Walter Cummings Does Not Disqualify himself from ruling on this case May, 1979-to date for her political affiliates, Thomas Brown, Paul Heineke, Michael J. Murray.

That on April 21, 1981 (without any prior notice to Plaintiff) a "sua sponte" order was issued by this Court to favor Defendants' suppression of the true trial record

of this case—which the Clerk Of The District Court, H. Stuart Cunningham, failed to submit to suppress the errors of Judge Leighton.

That on a previous appeal, alleged "interlockatory", Attorney Paul Heineke was privileged to ignore the Nov. 1, 1978 order of Judge Grady to show cause why he was petitioning H. Stuart Cunningham, Clerk of the District Court to consolidate these cases; such "opinion" was submitted by E. Dinger, subordinate Clerk without notice to Plaintiff and without docketing said "ex parte" letters sent up with that part of the record favorable to Defendants.

That E. Dinger's note was placed in all four files; That E. Dinger's and Nina Cunningham's letters were refused to be submitted to the U.S. Supreme Court, Oct. 8, 1980 and Jan. 5, 1981 by H. Stuart Cunningham, another political appointment through the democratic party.

Plaintiff is bringing this petition at the earliest possible date in view of the fact that she has been denied the public records of Defendants, the public file of her own case, and the Shakman case until she filed suit against H. Stuart Cunningham: whereupon she discovered these letters in the files above, January 29, 1981 and the Deputy Clerks in charge and E. Dinger himself refused to certify said records of their own and H. Stuart Cunningham's Errors.

Over and above a statutory petition for a change of venue this non-attorney, *pro se* plaintiff has a right to move to disqualify Judges Bauer, Cummings for the specific grounds herein stated and to ask for a Change of Venue because of all the "ex parte" communications with Clerks, Judges of the Court: Plaintiff has a right to move to disqualify all involved and a right to be heard and her cause adjudicated by fair and impartial judges, which is not the 7th Circuit Court of Appeals in Chicago. As stated above said Judges have been hostile, beligerent, and prejudicial in order to punish her for daring to challenge the actions of the politically affiliated Defendant Attorneys.

Wherefore, Plaintiff representing herself, petitions for a change of venue to Springfield, Illinois or in the alternate a motion to disqualify, Judge Walter Cummings and others acting in conjunction with him on the grounds of prejudice.

Whereas, the record has failed to be placed before the Court by deliberate, malicious intent of Defendants and the politically affiliated Clerks of the Court, H. Stuart Cunningham and Charlie Webb; That Said Record Was The Only Record In The Briefs Of Plaintiff And Defendants, May-August, 1980: Appellant requests that immediate steps be taken to secure this record for the Court.

That the decision of the Illinois Appellate Court is pending appeal in the Illinois Supreme Court as a matter of right of Plaintiff-Appellant and was deliberately, maliciously created as evidence—after the fact—of McCutcheon's deprivation of job, salary, back pay, terminal pay, and back pension owed her—which this decision "Complaint For Administrative Review" has no relevancy as a replacement for 16 pre-trial transcripts denying Appellant discovery, jury trial, and dismissing her attorneys, forcing her to go *pro se* by the Former City Corporation Counsel, Judge George N. Leighton, who "took over" this case by force, Nov. 3, 1978 before it was transferred to him after the fact November 8, 1978 as a result of "ex parte" communications with Defendants, Clerks of the Court, and the Seventh Circuit Court of Appeals.

.....

Anabel J. McCutcheon

Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

APPENDIX D

Unpublished Per Curiam Order

JUDGMENT — WITHOUT ORAL ARGUMENT

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

June 25, 1981

Before

Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. HARLINGTON WOOD, JR., *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
GEORGE N. LEIGHTON, *Judge.*

This cause came before the Court for decision on the record from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration whereof, It Is Ordered And Adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the order of this Court entered this date.

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

Submitted: May 12, 1981[1]

June 25, 1981

Unpublished Order Not To Be Cited Per Circuit Rule 35

Before

Hon. ROBERT A. SPRECHER, *Circuit Judge*
Hon. HARLINGTON WOOD, JR., *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*

No. 79-2568

ANABEL J. MCCUTCHEON,

Plaintiff-Appellant,

vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
GEORGE N. LEIGHTON, *Judge.*

ORDER

Plaintiff-appellant Anabel J. McCutcheon brought this pro se civil rights action against the Board of Education,

[1]After preliminary examination of the briefs, the court notified the parties that it had tentatively decided that oral argument was unnecessary. The notice provided that any party could file a "Statement as to Need of Oral Argument." *See,* Fed. R. App. P. 34(a); Circuit Rule 14(f). Having considered the appellant's Statement as to Need for Oral Argument, the court has concluded oral argument is not necessary. The case is submitted for decision on the briefs and the record alone.

City of Chicago, the General Superintendent of Schools, Joseph P. Hannon, Board member Carey B. Preston and other school officials and employees following her removal for cause as principal of the Audubon Elementary School in Chicago pursuant to hearing and notice (Ill. Rev. Stat., ch. 122, § 34-85 *et seq.* (1973), hereinafter "School Code"). Claiming under the Civil Rights Act of 1841, 42 U.S.C. §§ 1983, 1985 and 1988, plaintiff alleged that the defendants conspired to deprive her of due process and equal protection guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution. In the District Court of the Northern District of Illinois, Eastern Division, the plaintiff sought, *inter alia,* a declaratory judgment that her constitutional rights had been violated, a mandatory injunction reinstating her with back salary, compensatory damages and punitive damages of thirty million dollars, respectively. The district court granted the defendants' motion to dismiss the complaint for failure to state a claim for federal relief. Plaintiff appeals the district court's order of dismissal.

Anabel J. McCutcheon was a tenured educational employee and principal of the Audubon Elementary School form 1965 to October 3, 1977 when she was dismissed from service. On September 7, 1976, she received written notification from General Superintendent Joseph P. Hannon of her suspension pending a hearing before a Trial Committee of the Board of Education on charges of conduct unbecoming a principal and failure to discharge her duties and responsibilities as principal. On both September 16 and October 6, 1976, McCutcheon received a bill of particulars from the Board setting forth the ten specific charges made against her. Fifteen hearing sessions were held over the course of a year pursuant to Board Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois, copies of which have been filed with plaintiff-appellant's brief. McCutcheon was represented by counsel at the hearings and witnesses were presented on her behalf. On October 3, 1977, the Board approved and

adopted the recommendation of the Trial Committee that she be discharged from service.

Thereafter, McCutcheon filed this action in the United States District Court for the Northern District of Illinois, Eastern Division, claiming that defendants conspired to deny her due process and equal protection. During the pendency of this action in the district court, McCutcheon had judicial review of the Board's action in the Circuit Court of Cook County. The circuit court found substantial evidence in the record to support the Board's decision to terminate, and held that McCutcheon received due process and a fair hearing within the requirements of both Illinois law and the Constitution of the United States. Subsequently, on November 28, 1979, the district court dismissed McCutcheon's complaint for failure to state a federal claim and McCutcheon appealed.

McCutcheon enumerates nine "Issues Presented for Review" in her brief on appeal. Within the context of this case, only the first question presents a substantial issue for consideration by this court. Therefore, the discussion herein will focus primarily upon the first question and the remaining questions will be treated in briefer fashion, *seriatim*. The first issue presented on appeal by the plaintiff-appellant appears in the text of her brief as follows:

1. The Defendants deprived Plaintiff of a means of a livelihood and her constitutional rights of due process by disregarding the Tenure Laws.

The district court dismissed McCutcheon's complaint on the rationale that she had not alleged facts which would prove a deprivation of a constitutional right nor had she alleged facts which would establish a charge of class-based discrimination required for claims under 42

U.S.C. § 1983 and 1985. We affirm the district court's holding.[2]

Liberally construing the facts of McCutcheon's complaint and accepting them as true, as we must in reviewing a dismissal of a complaint on the pleadings, it is apparent that she has not offered facts which if proven would establish a violation of her constitutional rights. The complaint is a rambling and confusing document, consisting mainly of a long diatribe against those whom McCutcheon apparently believes were in some way responsible for her dismissal. The gravamen of McCutcheon's complaint is that she was denied a fair hearing because the defendants were prejudiced against her and conspired to have her dismissed on the basis of "ten fabricated hearsay charges." However, none of the complaint allegations tend to support McCutcheon's claim that the "tenure laws" were in fact disregarded or that there were any deficiencies in the statutorily prescribed hearing process by which she was dismissed. Instead, the allegations of the complaint, when not consumed with matters of personal enmity, argue points of evidence which arose during the hearing, in an apparent attempt to relitigate in federal court the issue of whether the Board had sufficient evidence to dismiss her. From the summary review of the complaint allegations which follows, it can be readily seen that McCutcheon has not

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[2] It is unclear whether plaintiff is asserting a class based discrimination claim on appeal, where as part of the "Conclusion" section of her brief, she states: "Judge Leighton inaccurately and prejudicially ruled: 'The Plaintiff does not . . . nor can she allege facts, which would prove a constitutional deprivation or a charge of class based discrimination.' . . . (Plaintiff) filed no charges of Class Based Discrimination in ths (sic) wrongful firing of a Tenured Principal. Pro Se Plaintiff invoked jurisdiction under Title 42 U.S.C. § 1983, 1988." In any case, it is clear from a review of the complaint (infra) that a charge of class based discrimination does not appear therein.

alleged facts showing discrimination or a denial of procedural due process.

With respect to General Superintendent of Schools, Joseph P. Hannon, McCutcheon claims that he was without authority to bring the charge concerning indecent attire because he was not her supervisor or General Superintendent during the period relevant to that offense. She does not reveal the authority on which she bases such a claim. However, it is clear that under the School Code and the Rules of the Chicago Board of Education the acting General Superintendent has a statutory duty to initiate charges against school board employees. *Jones* v. *Hannon,* 58 Ill.App.3d 504, 508 (1978).

McCutcheon further claims that Hannon was biased against her because she publicly criticized certain school custodial services and charged that there had been a misuse of state funds for construction projects at Audubon in 1973 and 1975 while Hannon was Assistant Superintendent of Facilities Planning, a position he held prior to becoming General Superintendent. It is not clear whether Hannon was ever made aware of such criticisms—they were certainly not directed toward him personally—but, more importantly, McCutcheon does not indicate how Hannon acted to prejudice her hearing rights. From the complaint it does appear that Hannon participated in the hearing process at all beyond formally presenting charges and being represented at the hearing by a Board attorney. He is by statute precluded from voting at Board meetings (School Code, § 34-12) and thus, he could not have voted for her dismissal. Inasmuch as no overt act on the part of Hannon is alleged in connection with plaintiff's claim of a conspiracy to deny her due process hearing rights, the complaint as to Hannon failed to state a claim. *Hostrop* v. *Board of Junior College District 515,* 523 F.2d 569, 576 (7th Cir. 1975), *Adams* v. *Pate,* 445 F.2d 105, 107 (7th Cir. 1971). Finally, it should be noted that McCutcheon does not allege in her complaint a violation of her First

Amendment right, nor does she allege facts tending to show that her exercise of that right was a substantial factor in the decision to dismiss her.

Superintendent William Rohan, Sr., McCutcheon's immediate supervisor, allegedly "demonstrated bias and hostility by refusing to protect Plaintiff from the assault, intimidation and harassment of janitors Garofalo, Moran." McCutcheon describes various personal affronts for which Rohan was allegedly responsible. These are wholly irrelevant to the circumstances surrounding the hearing or to her present civil rights claims with one exception: McCutcheon believes that her office was moved by Moran and Garofalo at the direction of Rohan from a windowless room to an office which contained windows in order to corroborate the testimony of one witness that she was observed scantily clad in an office containing a skylight and windows facing the playground. This allegation raises an evidentiary problem which is not within the province of a federal court to review in a civil rights action. *Butz* v. *Economou*, 438 U.S. 478, 514, 98 S.Ct. 2894, 2915 (1978).

Finally, with regard to Rohan, McCutcheon makes the curious claim that he denied her the right to a private hearing by serving a suspension notice on her at her office while in the presence of two guards and an assistant. Of course, this allegation, which makes no rational sense, does not present a claim of a due process violation.

According to McCutcheon, District Superintendent, Gerard J. Heing, was her immediate supervisor during the period relevant to eight and one-half of the ten charges. McCutcheon relates the many instances in which Heing treated her unfairly in the past, and discusses, in none too clear a fashion, the circumstances surrounding Heing's bringing of charges of insubordination and failure to follow directives. Again, these are evidentiary matters which do not go to the essential question of whether the charges were fairly considered. Finally, she claims that Heing "conspired with defendant Garo-

falo by removing Plaintiff's fourth office phone extension and deliberately placing it in Garofalo's office for the purpose of spying, April, 1975." This allegation is patently frivolous.

The principle charges against Michael Murray, attorney for the Board of Education are the following: that he refused to comply with discovery in two unrelated chancery suits brought by McCutcheon in 1973 and 1974 regarding a "phony merit pay plan", that he held up several pay raises in retaliation for her filing those actions, and that he,

> demonstrated bias and hostility by refusing Plaintiff proper legal services on board matters pertaining to Depositions, Interrogatories—and by improperly ordering her signature on inaccurately prepared interrogatories in which Plaintiff was not present or involved through direct order from the Deputy Superintendent . . . .

Attorney Michael Murray did not represent McCutcheon at her hearing and therefore had no duty to give her "proper legal services." The foregoing allegations concerning Murray are either irrelevant or do not present issues of a constitutional dimension.

The same is true with respect to the allegation concerning defendant Earl B. Hoffenberg, assistant attorney for the Board. McCutcheon merely notes that he appeared at the hearing as the attorney for Superintendent Hannon, although he had not relinquished his position as Board attorney. She offers no explanation of how this dual representation is irregular or how her hearing rights were prejudiced thereby.

Mario Garofalo is the school custodian whom McCutcheon was charged with having threatened with a baseball bat. He allegedly "demonstrated his hostility by verbal and physical assaults on . . . plaintiff, which assaults were supported by Defendants Heing, Rohan, Hannon without investigation. . ." She recounts how

Garofalo received illegal benefits from school officials or private contractors for his custodial services. Such allegations are, of course, irrelevant to her case, and are at best a disingenuous attempt to shift the focus of attention.

Carey B. Preston, Vice President of the Board and Chairperson of the Trial Committee, according to McCutcheon, has previously "demonstrated bias and hostility" toward her by refusing McCutcheon representation of counsel and redress of grievances when she was Chairperson of the Board Grievance Committee overseeing another matter in which McCutcheon was involved. As Chairperson of the Trial Committee, McCutcheon alleges that, "Preston refused to separate one charge from the others regardless of the evidence presented; or to accept any evidence other than the 'irremediable' judgment of the Superintendent made and supported by the Board without investigation before Trial." Other allegations concerning Preston raise similar objections to evidentiary rulings that were made by Preston while conducting the hearing. For example, McCutcheon alleges the following:

> . . . Defendant Preston suppressed all evidence, cross examination and struck testimony of witnesses that refuted Garofalo's testimony on the Rehab program at Audubon . . . and would not permit the introduction of testimony proving bias. . .
>
> • • •
>
> . . . Preston suppressed all criticism, evidence, cross-examination, and struck testimony of witnesses that proved detrimental to the Board and the Defendants Hannon, Heing, Rohan and Hoffenberg. . . . Defendant Preston would not permit Plaintiff to introduce the transcript of Plaintiff's criminal trial concerning the kicking of Tom Moran, Jr. in the buttocks to prove the perjury of Mario Garofalo . . . but permitted Defendant Hoffenberg to introduce some (sic) transcript for cross-examination of Plaintiff and Plaintiff's witnesses.

Preston was not bound by the legal rules of evidence in making evidentiary rulings. Rather, under the rules governing dismissal proceedings, she had large discretion in determining such matters.[3] An abuse of discretion is not indicated by the factual allegations of the complaint, nor does it appear, for that matter, that Preston's evidentiary rulings would be erroneous under the stricter standard of the legal rules of evidence. A claim of constitutional magnitude is thus not indicated by McCutcheon's evidentiary objections. McCutcheon does not claim that there was absolutely no evidence presented to support the decision to dismiss her.

Finally, in her brief on appeal, McCutcheon alleges that Preston was not an independent hearing officer, without specifying the grounds for this allegation. With respect to a noncriminal proceeding, the Supreme Court has required only that the hearing be conducted by some person other than one initially dealing with the

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[3] The Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois, which plaintiff filed with her brief, sets forth, in relevant part, the evidentiary rules governing dismissal proceedings as follows:

> Evidentiary Rules to be followed during the hearing shall be as follows:
>
> (1) The parties may offer such evidence as they desire and shall produce such additional evidence as the hearing officer may deem necessary to an understanding and determination of the dispute.
>
> (2) The hearing officer shall be the judge of the relevancy and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary.
>
> (3) Objections to evidentiary offers may be made and shall be noted in the record. The hearing officer shall have the power to make ruling including the power to exclude evidence. "Offers of Proof" shall be permitted.
>
> (4) Any hostile witness may be examined as if under cross examination.

case because the officer directly involved in making recommendations cannot always have complete objectivity in evaluating them. *Morrissey* v. *Brewer,* 408 U.S. 471, 485-86 (1972). *See also, Goldberg* v. *Kelly,* 397 U.S. 254, 266, 271 (1970); *cf. Wolff* v. *McDonnel,* 418 U.S. 539, 571 (1974). *See generally,* Lawrence Tribe, American Constitutional Law (1978) § 10-16. McCutcheon does not allege that Preston was previously involved in any aspect of McCutcheon's case, nor does she allege that Preston has a conflict in interest that would disqualify her as an impartial hearing officer.

We conclude, from the foregoing review of the allegations contained in the complaint, that the district court correctly ruled that McCutcheon has not alleged facts showing a deprivation of a constitutional right (citing *Ryan* v. *Aurora City Board of Education,* 540 F.2d 222 (6th Cir. 1976) nor has she alleged facts showing class-based discrimination (citing *Griffin* v. *Breckenridge,* 403 U.S. 88, 102 (1971).

The remaining issues presented by appellant for review by this court (again, stated as they appear in the text of her brief) can be dealt with briefly.

2. The Plaintiff was deprived of her constitutional rights under the First and Fourteenth Amendments of personal liberty and due process to a private hearing under the Ill. Rev. Stat., 1975: 122: § 34-85.

Reference should be made to the above discussion concerning McCutcheon's objection on due process grounds to the delivery of the suspension notice to her by defendant Superintendent William Rohan in the presence of others. The same claim is advanced here and, for the reasons previously noted, it is without merit. The First Amendment issue, however, is presented for the first time on appeal, and therefore should not be entertained by this court, although it is obvious that the claim is frivolous in any event. *Ohio Casualty Co.* v. *Rynearson,* 507 F.2d 575, 582 (7th Cir. 1974). Paren-

thetically, it is interesting to note that the school code provision relied upon by McCutcheon, staes that the "hearing shall be *public* at the request of either the teacher or principal or board." (*supra,* emphasis supplied).

3. The Plaintiff was deprived of her constitutional rights under the Fifth, Sixth, and Fourteenth Amendments by being prosecuted on criminal charges [#1, #3, #7] [sic] in an administration [sic] hearing.

This allegation is meritless for the simple reason that McCutcheon was not prosecuted on criminal charges in an administrative hearing, although matters relating to the kicking of Tom Moran were the subject of a previous criminal action brought by Moran against McCutcheon. Plaintiff is here again presenting an issue for the first time on appeal which, as noted above, she may not do.

4. Plaintiff was denied her constitutional rights under the First and Fourteenth Amendments of the United States Constitution to criticize the Board and Defendant Joseph P. Hannon on Nov. 10, 1975 at a public meeting of the Board: for the illegal transfer and use of funds in violation of Ill. Rev. Stat., 1975: § 34-22.2 and § 34-49.

In her complaint McCutcheon did not allege that she was denied a right to criticize Hannon and the Board or that her dismissal was in retaliation for exercising her right of free speech. Rather, allegations concerning her past criticism of school policy were offered as the reason why Hannon was biased against her. Again, this First Amendment claim is presented for the first time on appeal, and is, in any event, unsupported by the facts of her complaint which fail to show that her prior criticism was a substantial factor in the decision to dismiss her.

5. The Court of Judge Leighton had no jurisdiction to consolidate this cause with a title VII four

year old complaint on Nov. 3, 1978 and no authority to deny Plaintiff a public jury trial by reason of this consolidation [Transcript January 19, 1979].

Judge Leighton ordered the consolidation of this case, and cases numbered 78 C 3894, 78 C 3955 and 76 C 4763, on the grounds of relatedness under Rule 2.31 of the Rules of the United States District Court for the Northern District of Illinois. That order of consolidation was vacated prior to the dismissal of this suit. Assuming that in the above statement plaintiff meant "authority" where she states "jurisdiction," this claim is meritless. Consolidation of actions presenting a common issue of law or fact is permitted as a matter of convenience and economy of administration, and the court is given broad discretion to decide whether consolidation is appropriate. *See generally,* 11 Wright & Miller, *Federal Practice and Procedure*: Civil § 2883.

6. The Nov. 3, 1978 "order of reassignment from Grady to Leighton," was not a valid order of Judge Grady.

McCutcheon questions the validity of this order because she believes that the order of reassignment of this case from Judge Grady to Judge Leighton in the district court was falsified by the defendants and/or the Clerk of the court. She is of the view that neither Judge Leighton or Judge Grady would make such an order "outside of the Executive Committee or in total disregard of chief Judge Parsons." There is no evidence in the record to suggest that the order was falsified. In any event, the point is now moot since Judge Leighton took cognizance of the complaint and decided the matter.

7. The Court erred in dismissing William Rohan, leaving his name out of the Judgment Order (3899) [App. "E". p. 6a].

McCutcheon is here referring to a judgment order of November 27, 1979 denying her motion for summary judgment of default against the defendants. That order named all of the other individual defendants except Rohan, probably by oversight. Again, this issue has been mooted by later developments in the case, including the dismissal of the complaint as to all of the defendants.

8. The Court erred in dismissing all Defendants for alleged immunity as acting in a "quasi-judicial" capacity (Judgment Order—3955) [Appendix "F", p. 10a.].

Judgment order in case number 78 C 3955 is not before this court in this appeal of the district court's order in case number 78 C 3899. We are therefore without jurisdiction to consider this claim.

9. The Defendant Attorneys have no statutory authority to represent Employees Hannon, Heing, Rohan, Garofalo: and have no statutory authority to represent the Defunct Board of Education on appeal without a public contract [Ill. Rev. Stat., 1975, 122: § 34-49].

This attack upon the propriety of the retention of defense counsel does not bear upon McCutcheon's present claim. By her own account, she has notified the Attorney Registration and Disciplinary Commission of Illinois about this matter, which is indeed the proper forum for consideration of this complaint.

In view of the foregoing, the order of the district court dismissing the plaintiff's complaint for failure to state a claim for federal relief is Affirmed. Plaintiff-appellant's "Petition for a Change of Venue to Springfield, Illinois or in the Alternative a Motion to Disqualify Judge Walter Cummings and Others Acting in Conjunction with Him on the Grounds of Prejudice," filed in this Court on May 11, 1981 is Denied.

APPENDIX E

UNITED STATES DISTRICT COURT

Everett McKinley Dirksen Building

United States Court House

Chicago 60604

H. Stuart Cunningham
Clerk

Office of the Clerk

20 October 1978

Honorable Prentice H. Marshall
Honorable John F. Grady
Honorable George N. Leighton
219 South Dearborn Street
Chicago, Illinois 60604

Re: Anabel J. McCutcheon v. Board of Education
78 C 3894; 78 C 3955; 78 C 3899; 76 C 4763

Honorable Sirs:

Attached is a letter from attorney Thomas P. Brown and attorney Paul H. Heineke suggesting that the above-captioned cases are related.

If each of you agree that the cases are related and ought to be consolidated, Judges Marshall and Grady may transfer 78 C 3894, 78 C 3955 (Judge Marshall) and 78 C 3899 (Judge Grady) to the Executive Committee with the recommendation that they be reassigned to the calendar of Judge Leighton as related to 76 C 4763, if Judge Leighton consents to accept it.

Respectfully submitted,

/s/ Nina Cunningham
Nina Cunningham
Administrative Assistant to the
Court Administrator

HSC/nsc
attachments

HEINEKE & SCHRADER

135 South LaSalle Street

Cable Address Heicon | Chicago 60603 | Telephone 236-6655 Area Code 312

October 16, 1978

Honorable H. Stuart Cunningham
Clerk of the United States District Court
Northern District of Illinois
Eastern Division
219 South Dearborn Street, 20th Floor
Chicago, Illinois 60603

Re: Anabel J. McCutcheon vs.
The Board of Education, et al.
United States District Court
Case No. 78-C-3899
Our file No. 103,245

Dear Mr. Cunningham:

I am one of the attorneys in an action pending in the United States District Court, for the Northern District of Illinois, Eastern Division, captioned Anabel J. McCutcheon v. Board of Education City of Chicago, and about 27 other individual defendants. The case is No. 76-C-4763 and is presently assigned to Judge Leighton.

Jurisdiction of Count I is invoked pursuant to Title 7 of the Civil Rights Act of 1964 (42 USC 2000e, et seq.) Count II is against the Principals Association. There is pending and undecided as yet a motion to dismiss.

Jurisdiction is invoked under Count III pursuant to the Fair Labor Standards Act of 1938 and 28 USC 1337.

Jurisdiction in Count IV is invoked pursuant to 28 USC 1343 since plaintiff seeks to redress the deprivations of rights under the law secured by the 14th Amendment to the United States Constitution and 28 USC 1983.

On October 3rd, 1978, plaintiff, pro se, filed an action in the United States District Court, for the Northern District of Illinois, Eastern Division, against the Board of Education of the City of Chicago, Michael J. Murray, Mrs. Carey B. Preston, Earl B. Hoffenberg, Joseph P. Hannon, William Rohan, Gerard J. Heing and Mario Garofalo. The case received No. 78-C-3899 and was assigned to Judge Grady.

In the complaint plaintiff alleges that the action is for declaratory relief, injunctive relief and damages, to redress the deprivation of rights, and the jurisdiction of the court being invoked pursuant to the 5th and 14th Amendments of the United States Constitution and 42 USC 1983 and 42 USC 1985.

Miss McCutcheon, after a hearing, was dismissed by the Board of Education as principal of Audubon School and has pending an administrative action in the state court.

In our opinion, action 78-C-3899 grows out of the same transaction as is the predicate for the action brought and assigned No. 76-C-4763 and now pending before Judge Leighton. The basis for both claims, in our opinion, clearly relate to violations by the Board of Education and some of its employees, at least insofar as Count IV is concerned, as redress is claimed for deprivations under the color of law of rights, privileges and immunities under the 14th Amendment of the United States Constitution and 42 USC 1983.

In addition to 78-C-3899 there is pending before the United States District Court two additional lawsuits which grow out of the same transaction, 78-C-3894 and 78-C-3955. Counsel representing the defendants in those cases also intend to seek consolidation before Judge Leighton.

It seems that a decision in 76-C-4763 could or might have a chilling effect on 78-C-3899. To avoid the dupli-

cation, both by judges of the United States District Court, for the Northern District of Illinois, Eastern Division, and counsel representing the defendants, consolidation of 78-C-3899 into and with 76-C-4763 is recommended.

Respectfully submitted,
/s/ Paul H. Heineke

PPH: GP
cc: Miss Anabel J. McCutcheon
1917 Tanglewood Drive, Apt. 3B
Glenview, Ill. 60025

2653 Stewart Avenue
Evanston, Ill. 60201

APPENDIX F

Re: Status of 78 C 3899

78-2539

Anabel J. McCutcheon, Plaintiff-Appellant-vs-The Board Of Education City Of Chicago, et al Defendants-Appellees.

Plaintiff attempted to file a notice of appeal on a referral of Judge Leighton to the Executive Committee for consolidation of this cause with another cause. The Clerk's Office requested that the plaintiff wait until the Executive Committee rendered their decision before filing a Notice of Appeal on the said matter.

Instead the plaintiff asked Judge Leighton to file the Notice of Appeal. He instructed the Clerk's office to docket the plaintiff's Notice of Appeal "as is".

/s/ E. Harold Dinger
E. Harold Dinger
Deputy Clerk

Office-Supreme Court, U.S.
FILED
SEP 10 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-147

In the

Supreme Court of the United States

OCTOBER TERM, 1981

ANABEL J. McCUTCHEON,

Petitioner,

vs.

CHICAGO BOARD OF EDUCATION,
MRS. CAREY B. PRESTON,
MICHAEL J. MURRAY,
EARL B. HOFFENBERG,
JOSEPH P. HANNON,
WILLIAM ROHAN,
GERARD J. HEING,
MARIO GAROFALO,

Respondents.

Appeal from the United States Court of Appeals
for the Seventh Circuit
Judge ROBERT A. SPRECHER
Judge HARLINGTON WOOD
Judge RICHARD D. CUDAHY
Judge WALTER CUMMINGS
Judge WILLIAM BAUER

SUPPLEMENTARY BRIEF FOR A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ANABEL J. McCUTCHEON, *Pro Se*
Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

The Scheffer Press, Inc.—(312) 263-6850

Oral Argument Requested

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Attorneys: MICHAEL J. MURRAY, PAUL HEINEKE, and THOMAS BROWN maliciously lied about their statutory authority to expend public school funds to represent the CHICAGO BOARD OF EDUCATION, 1976-1981 and specific Defendants, who were fired by the Illinois Legislature for such misuse of funds, leading to the November, 1979 bankruptcy of $550,000,000 (five hundred, fifty million—half a billion dollars).

II. Whether the U.S. District Court: Judges Parsons, Leighton, Aspen, Crowley and Sussman and the Seventh Circuit Court of Appeals: Judges Cummings, Bauer, Wood, Sprecher have denied a non-attorney Plaintiff due process and equal representation by establishing a privileged class of politically affiliated Defendants (CHICAGO BOARD OF EDUCATION, CHICAGO FINANCE AUTHORITY) and Defendant Attorneys, suppressing the evidence of criminal misuse of funds in the public records, witnesses and discovery denied.

III. Whether the untimely "taxation of costs" signed by Judge Leighton, former City of Chicago Corporation Counsel, to permit PAUL HEINEKE, former City of Chicago Corporation Counsel, to attempt extortion of money for the Third Time from Petitioner in four "consolidated" Title VII complaints: is conduct "unbecoming a Judge"; or punishment, retaliation against a Plaintiff, who has appealed his errors in judgments, his "ex parte" communications with Defendants.

IV. Whether the Seventh Circuit Court of Appeals had jurisdiction, July 29-Aug. 18, 1981 [App. U. V pp.

45a ff] to hear Defendants' untimely appeal for fees, costs denied by the trial Court Judge Leighton on Jan. 21, 1980.

V. Whether the Clerks of the U.S. District, 7th Circuit Courts have jurisdiction to decide the statutory authority of private attorneys to defend a public body (USCA Question IX evaded by the 7th Circuit Court of Appeals, 79-2568) by awarding them "taxation of costs" [App. V, p. 47a].

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Judge WILLIAM BAUER

SUPPLEMENTARY BRIEF FOR A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Comes Now the Petitioner, ANABEL J. McCUTCHEON, *Pro Se,* to file a Supplementary Brief for the reasons of an untimely sua sponte order [App. U, p. 45a] and improper Clerk's Award, Aug. 17, 1981 [App. V, p. 47a] granting private attorneys PAUL HEINEKE and

THOMAS BROWN "taxation of costs" denied them in the trial court by Judge Leighton on Jan. 21, 1981 and May 11, 1981 as per App. G-1, p. 12a, line 4 "Fees for Printing—$761.98".

That there is no evidence in any court record discussed herein for these private attorneys to collect for the public body BOARD OF EDUCATION—or their "Right to Defend" individuals at public expense [See App. S, T, pp. 42a, 43a].

That Defendants and Clerks of both Courts [H. Stuart Cunningham, Clerk of the U.S. District Court and Charlie Webb, Chief Depute Clerk of the Seventh Circuit Court of Appeals] have denied Petitioner a Rehearing by untimely mailings and have maliciously conspired to strike several appeals [App. O, P, Q, R] following a suit filed against them [81 C 1143] for loss, alteration, and refusal to submit the record, detrimental to the Defendant Board of Education to the U.S. Appellate #80-1482, 79-2568 and Supreme Court, #80-724.

That the denial of the public documents, other records detrimental to Defendants has suppressed the evidence of the criminal misuse of funds, personnel, 1976-1981 against specific Defendants and their attorneys herein named. Said certain defendants being fired by the Illinois Legislature for the misuse of half a billion dollars and personnel on May 1, 1980; said "dismissal from the service" being upheld by the Illinois Supreme Court in *Polich* v. *The Chicago Finance Authority,* 79 Ill. 2d 188 and in violation of the strict sanctions imposed in P.A. #81-1221, p. 8 on Defendants, effective Jan. 16, 1980 which the Chicago Courts of Judges Parsons, Leighton, Aspen, Crowley, and Magistrate Sussman and the U.S. Circuit Court of Judges Bauer, Cummings, Sprecher, Wood, and Cudahy failed to recognize or implement under Title 42 U.S.C. 1983.

OPINIONS BELOW

1. Docketed May 13, 1981 Briefing of Judge Aspen on Plaintiff's Motion for a Change of Venue. It is unpublished and reprinted in App. I, p. 17a.

2. Docketed May 19, 1981 Referral by Magistrate Sussman to the Executive Committee without prior notice to Plaintiff. It is unpublished and reprinted in App. J, p. 19a.

3. Docketed May 19, 1981 Refusal of a Change of Venue by Chief Justice Parsons without regard to the briefing schedule of Judge Aspen. It is unpublished and reprinted here in App. K. p. 21a.

4. Docketed May 29, 1981 Change of Status Hearing until June 12th. It is unpublished and is reprinted in App. p. 24a.

5. No DOCKETING. June 1, 1981 summary judgment dismissing all Defendants. It is unpublished and is reprinted in App. N. p. 25a.

6. No Judgment Order. June 5, 1981 (No notice of any hearing before Judge Crowley) Dismissal of private Attorney PAUL HEINEKE without the public documents demanded authorizing him to represent the BOARD OF EDUCATION, employees at PUBLIC EXPENSE, 1976-1981.

It is unpublished and is reprinted in App. p. 36a.

Notice of Appeal to the U.S. Supreme Court was filed on June 30, 1981 Consolidated 81 C 098 and 81 C 2411.

JURISDICTION

Jurisdiction is invoked for a Writ Extraordinaire in accordance with 28 U.S.C. §1651 Writs and §1652 Judicial Procedure:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usuages and principles of law"

Pursuant to the Public Information Act of 1967; the State Records Act of 1957, Section 43:

> "'Agency' means all parts, boards, and commissions . . . 'Public officers' means all officers of the executive branch . . . and all other officers (Van Gorkom) and heads, presidents (Kenneth Smith), or Chairmen of said boards, commissions, and agencies STATE GOVERNMENT. . ."

Pursuant to the Public Information Act, Section #3:

> "Every Agency [Board of Education, Chicago Finance Authority] shall make available to the public the following information:
>
> 1. Publication in the Federal Register: addresses, officers, methods of applying for access to the public records.
>
> 2. Agency Opinions and Orders: INSTRUCTION TO STAFF THAT AFFECT ANY MEMBER OF THE PUBLIC (Plaintiff, et. al. involved in civil rights complaint to the EEOC and under Title VII)"

Original Jurisdiction was invoked under Title 42 U.S.C. §1983, §1988 and Title 18 U.S.C. §241 for the conspiracy of hiring private attorneys "under the counter", 1976-1981 to fire Plaintiff; deprive her of a means of a livelihood; deny her a fair trial; jury trial on criminal charges of which she was previously acquitted; and deprive her

of fair appeals to the U.S. Appellate and Supreme Courts.
Title 42 U.S.C. §1983

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress (complaint for administrative review).

Title 42 U.S.C. §1988

§ 1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

Title 18: §241:

§ 241. Conspiracy against rights of citizens.

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

APPELLATE COURT JURISDICTION

Jurisdiction is invoked in the Appellate Court under Title 28 U.S.C. §2202 (1970):

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment V: Guaranty of Trial By Jury; Private Property Respected:

. . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

United States Constitution, Amendment XIV: Definition of Citizenship

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

ILLINOIS STATUTES

Ill. Rev. Stat., 1975 Chapter 122 (School Law):

> §34-18.1 *Protection from suit.* The board of education shall insure or indemnify and protect the board, any member of the board or any agent, employee, teacher, student teacher, officer or member of the supervisory staff of the school district against financial loss and expense, including reasonable legal fees and costs arising out of any claim, demand, suit, or judgment by the reason of alleged negligence, alleged violation of civil rights occurring on or after September 5, 1967. . . ."

[The Board of Education, City of Chicago has been in violation of this statute-not having been "bonded" since December, 1975 for lack of funds]

Ill. Rev. Stat., 1975 Chapter 122 (School Law)

§34-49 *Contracts, expense and liabilities without appropriation*:

> "No contract shall be made or expense or liability incurred by the Board, or any member of committee thereof, or by any person for or in its behalf, notwithstanding the expenditure may have been ordered by the board, unless an appropriation therefore has been previously made. Neither the board, nor any member of committee, officer, head of Department [Defendant MICHAEL J. MURRAY] or employee thereof shall during a fiscal year expend or contract to be expended any money, or incur any liability, or enter into any contract which by its terms involves the expenditure of money for any of the purposes for which provision is made in the budget, in excess of the amounts appropriated in the budget. Any contract, verbal or written, made in violation of this section is void as to the board, and no moneys belonging thereto shall be paid thereon."

Ill. Rev. Stat., 1975: Chapter 122 (School Law):

§34A-606 (new paragraph—P.A. 81-1221)

(Ch. 122, new par. 34A-606) [S.H.A. ch. 122, ¶ 34A-606]

Sec. 34A-606. Initial and annual reports. The Directors, upon taking office and annually thereafter, shall prepare and submit to the Governor, Mayor, General Assembly, and City Council a report which shall include the audited financial statement for the preceding Fiscal Year of the Board, an approved Financial Plan or a statement of reasons for the failure to adopt such a Financial Plan, a statement of the major steps necessary to accomplish the objectives of the Financial Plan, and a request for any legislation necessary to achieve the objectives of the Financial Plan. The initial report of the Directors shall be submitted on or before April 1, 1980. Subsequent reports shall be submitted on or before January 1 of each year.

(Ch. 122, new par. 34A-607) [S.H.A. ch. 122, ¶ 34A-607]

Sec. 34A-607. Audit of Authority. The Authority shall be subject to audit in the manner now or hereafter provided for the audit of State funds and accounts. A copy of the audit report shall be submitted to the Auditor General, the Governor, the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate.

Ill. Rev. Stat., 1975: Chapter 122 (School Law):

§34A-608 (new paragraph—P.A. 81-1221)

(Ch. 122, new par. 34A-608) [S.H.A. ch. 122, ¶ 34A-608]

Sec. 34A-608. Sanctions. (a) No member, officer, employee, or agent of the Board shall commit the Board to any contract or other obligation or incur any liability on behalf of the Board for any purpose

if the amount of such contract, obligation or liability is in excess of the amount authorized for that purpose then available under the Financial Plan and Budget then in effect.

(b) No member, officer, employee, or agent of the Board shall commit the Board to any contract or other obligation on behalf of the Board for the payment of money for any purpose required to be approved by the Authority unless such contract or other obligation has been approved by the Authority.

(c) No member, officer, employee, or agent of the Board shall take any action in violation of any valid order of the Authority or shall fail or refuse to take any action required by any such order or shall prepare, present, or certify any information (including any projections or estimates) or report for the Authority or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, shall fail promptly to advise the Authority or its agents.

(d) In addition to any penalty or liability under any other law, any member, officer, employee, or agent of the Board who shall violate subsections (a), (b), or (c) of this Section shall be subject to appropriate administrative discipline, including, if warranted, suspension from duty without pay or removal from office as provided by law.

Section 2. This Act takes effect upon its becoming a law. [S.H.A. ch. 122, ¶ 18-8 note]

Approved: January 16, 1980 Effective: January 16, 1980

STATEMENT OF FACTS

1. December 31, 1975 Expiration of Board Insurance Contract to "indemnify" the Board, employees, agents, in accordance with the state statute, #34-18.1, p. 7.

2. Jan. 1-Apr. 1, 1976 (three months' period of grace) No renewal of said contract or representation of the law firm of Heineke, *et. al.*

3. July 28, 1976 Petitioner's request for a "Right To Sue" Letter acknowledged by the EEOC, TCH 5-0006.

4. Sept. 7, 1976 Petitioner was suspended without charges;

Sept. 16, 1976 Petitioner was "charged" with ten counts—including two criminal charges of which she was acquitted.

5. Dec. 28, 1976 Petitioner exercised her "Right to Sue" by filing a Title VII action against the Chicago Board of Education for reduction of pay, 1971; unequal pay, 1972-1976 with men principals, District Three: 76 C 4763.

6. June 24, 1977 PAUL H. HEINEKE represented the Board without any statutory "Right to Defend" a public body at public expense.

7. Sept. 27, 28, 29, 1978 Petitioner, non-attorney filed 78-3894, 78-3899, 78-3955 for Deprivation of a Means of a Livelihood as a Teacher, Principal, Locked Doors of an Alleged Public Hearing.

8. Oct. 16, 1978 Private Attorneys, who had filed no appearances for Defendants solicited the consolidation (from H. Stuart Cunningham, Clerk of the Court) of these causes with the Title VII cause for which they still had no public contract.

9. Oct. 20, 1978 These letters were not docketed, but were sent "ex parte" to Judges Grady, Leighton, Marshall by NINA CUNNINGHAM, Administrative Assistant to H. Stuart Cunningham, without any notice to Plaintiff, who discovered them hidden in the files she first saw, January 29, 1981 after filing a complaint against the Clerk for the loss, "alteration", and refusal to submit 40 trial transcripts to the Appellate and Supreme Courts.

10. Nov. 1, 1978 Judge John Grady ordered Defendant Attorney Paul Heineke to show cause why he was soliciting this consolidation from the Clerk and Judges "ex parte".

11. Nov. 3, 1978 Judge Leighton consolidated this cause and two others after dismissing Plaintiff's attorneys before trial; denying her the Court Record (denied her by H. Stuart Cunningham); denying her any discovery in this cause; and subsequently denying her a PUBLIC JURY TRIAL BECAUSE THESE CAUSES WERE CONSOLIDATED TITLE VII.

12. Nov. 7, 8, 9, 1978 Judge James B. Parsons issued the executive orders of transfer IPSO POST FACTO the consolidation "take-over" by Judge George N. Leighton.

13. Nov. 20, 1978 "E. Dinger" (the latter identified as a Deputy Clerk, subordinate to H. Stuart Cunningham) submitted an opinion "ex parte" to Appellate Court Judges William Bauer, Robert A. Sprecher, Harlington Wood, Walter Cummings (76 C 4763 of an alleged interlocutory appeal BEFORE ANY NOTICE OF APPEAL, Nov. 24, 1978.

14. Jan.-March, 1979 Denials of Appeals of the wrongful consolidation of Judge George N. Leighton, former city of Chicago corporation counsel, on the alleged "in-

terlocutory-non-jurisdictional" defense of HEINEKE, BROWN, through the Clerks, who had altered the records. Items #8, #9, #10 have been encompassed in the complaint against H. Stuart Cunningham, Charlie Webb, Deputy Clerk of the 7th Circuit [81 C 686, 81 C 1143]. That the rulings appealed were rendered immediately following Plaintiff's Motion for Default in the U.S. District Court and presentation of all the documentary evidence—never submitted to the Seventh Circuit Court of Appeals because it was detrimental to the Defendants.

15. July 6-Nov. 30, 1979 Trial Call of all four cases consolidated with Title VII 76 C 4763.

16. Aug. 27, 1979 First Filed Appearance of Thomas Brown in 76 C 4763. Judge Leighton failed to rule on his statutory authority to represent the Board at public expense.

17. November 30, 1979 Judge Leighton "unconsolidated" 78 C 3899, 3955 on the basis of "absolute immunity" of Defendants "acting in a Judicial Capacity" [Kangaroo Court]: Specific Defendants being those fired by the Illinois Legislature and others being the witnesses who brought charges: Superintendents Hannon, Heing, Rohan, JANITOR GAROFALO.

18. Feb. 10, 1981 Judge Aspen grants Defendants an extension of time with inadequate notice of motion to Plaintiff (mailed Feb. 9, 1981).

19. March 3, 1981 Judge Aspen denies Plaintiff any hearing, argument on her Motion #1: "To strike the Appearance of Thomas P. Brown for the Board of Education, Reverend Kenneth Smith as being without statutory authority (P.A. 81-1221 of the Chicago Finance Authority (304: 608 *SANCTIONS*) in sole control of the financial and legal obligations of the Board since Jan. 16, 1980".

20. March 3, 1981 Denial of subpoena for public documents of the Chicago Finance Authority—JEROME VAN GORKOM.

21. March 3, 1981 Denial of subpoena for public documents of the Chicago Board of Education—MICHAEL J. MURRAY.

22. March 20, 1981 Plaintiff's Motion to Compel Answer of the City of Chicago—subpoena, MAYOR JANE BYRNE, CITY CORPORATION COUNSEL.

23. April 2, 1981 Status Hearing Before Magistrate Sussman:

Plaintiff's Motion for a tro against private attorney, Thomas Brown representing the Chicago Board of Education without appointment, public contract entered and continued until May 11, 1981.

Plaintiff's Motion to strike the answer of Defendant Van Gorkom to quash the subpoena is entered and continued to May 11, 1981

24. April 15, 1981 "Taxation of Costs" entered by Judge George N. Leighton without adequate notice to Plaintiff—no tax bill mailed to Plaintiff as per affidavit of Paul Heineke.

25. May 11, 1981 Ruling of Magistrate Sussman: "oral argument is reset to May 19, 1981 at 9:30 a.m."

26. May 12, 1981 Ruling of Judge Aspen: "Enter plaintiff's petition for a Change of Venue from Judge Marvin Aspen, Magistrate Carl Sussman. . ." Defendants to file a response on or before May 19, 1981. Plaintiff to file a reply by May 22, 1981.

27. May 12, 1981 Referral to the Executive Committee by Magistrate Sussman, regardless of the briefing order of Judge Aspen—and the oral argument reset to May 19, 1981.

28. May 14, 1981 Ruling of Judge Parsons: Change of Venue denied without notice to Plaintiff, without briefing schedule above.

29. May 20, 1981 Notice of Appeal of the unusual ruling of Judge James B. Parsons, Magistrate Sussman.

30. Notice of Appeal docketed June 18 in USDC; June 23 in USCA. Untimely request for fees, July 9, 1981.

31. May 29, 1981 Status Hearing for May 29, 1981 stricken and reset to June 12, 1981.

32. June 1, 1981 Decision of Marvin E. Aspen with inadequate notice of hearing to Plaintiff by Defendants (mailed after hearing).

33. June 5, 1981 Decision of Judge Crowley (81 C 2411) with inadequate notice of hearing to Plaintiff (mailed after hearing).

34. June 28, 1981 Untimely mailings of decisions by the Clerk of the U.S. District Court—denying Plaintiff a rehearing.

35. June 25, 1981 Decision of the Appellate Court Judges Sprecher, Wood, Cudahy in USCA 79-2568 now on appeal to the U.S. Supreme Court.

36. July 9, 1981 Untimely Mailing of USCA Deputy Clerks of June 25, 1981 decision to deny Plaintiff a rehearing.

37. July 9, 1981 Demand for Fees by Deputy Clerks of the USCA.

38. July 10, 1981 Payment of Docketing Fees upon first Demand.

39. July 13, 1981 Certified Receipt of payment of fees.

40. July 14, 1981 Second Demand for Fees from*

41. July 15, 1981 Untimely receipt of fees from* H. Stuart Cunningham, Clerk of the Court.

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* Defendants in Complaint 81 C 686, 1143 filed Jan., Feb., 1981.

REASONS FOR GRANTING THIS WRIT

Pursuant to the Public Information Act of 1967: the State Records Act of 1957, Section 43 [p. 4]: I, Anabel J. McCutcheon, citizen, registered voter in Cook County, tax-payer in three towns; am entitled to the record I have been forced to subpoena because Defendants failed to comply with their responsibilities under Title V, Section 552, which mandates:

1. Publication in the Federal Register: addresses, officers, methods of applying for access to public records for two public bodies: the CHICAGO BOARD OF EDUCATION, the CHICAGO FINANCE AUTHORITY.

2. Agency Opinions and Orders: Instruction to Staff that affect any member of the public.

Defendants can not claim exemption for their secretive actions (conspiracy) in retaining private attorneys BROWN, HEINEKE, ZIELINSKI, to effect the firing of McCutcheon BEFORE ANY ADMINISTRATIVE HEARING, 1976, or the filing of a COMPLAINT FOR ADMINISTRATIVE REVIEW, Nov. 7, 1977 under the Illinois Administrative Review Act—following the expiration of their insurance contract, Dec., 1975. Defendants cannot claim exemption for paying these attorneys "under the counter" with public funds ILLEGALLY TRANSFERRED FROM TEACHER SALARIES—ultimately leading to the closing of the schools, December, 1979—and the "dismissal from the service" of the specific defendants herein involved; and the creation of the Chicago Finance Authority and *SANCTIONS* [P.A. 81-1221] to stop these practices.

Defendants cannot claim exemption for retaining THOMAS BROWN, 1978 -to date when the original insurance contract (expired) was with the specific law firm of HEINEKE and SHRADER. BROWN has not been a member of that law firm since 1978 to claim "pre-existing contracts" to represent the Chicago Board of Education —in violation of P.A. 81-1221, p. 8, since January 16, 1980. Likewise, Defendant JEROME VAN GORKOM alleges he was honoring these "pre-existing contracts" without introducing any evidence that they existed. Neither did he produce any evidence of improper service to him: he, being the only officer of the Chicago Finance Authority, and failing to publish in the federal register the above pertinent record of where he could be served with service of summons: "He shouldn't go into the kitchen, if he can't stand the heat." That is, he shouldn't enter public service, disposing of $800,000,000 public ILLINOIS STATE FUNDS (not Chicago taxes for the schools) if he doesn't expect to account for every penny misspent—for private attorneys instead of for teachers' salaries.

Defendants have produced no evidence of said contracts because they have lied about their existence in "ex parte" communications [76 C 4763, 78 C 3894, 78 C 3899, 78 C 3955, *et. al.* to Judges Parsons, Leighton, Marshall, Grady, Aspen, and Crowley; and 79-2568, 80-1482 to Appellate Court Judges Sprecher, Bauer, Wood, Cummings, *et. al.*]

Judge Aspen prejudicially erred in dismissing Defendants:

1. Jerome Van Gorkom without any evidence in the record of his improper service of summons, "pre-existing" contracts with private attorneys, THOMAS BROWN,

PAUL HEINEKE, CHRISTINE ZIELINSKI. [App S, T, pp. 42a, 43a]

2. Thomas Brown, Christine Zielinski, Paul Heineke, Michael J. Murray without any evidence in *any* court record of their alleged statutory authority to be paid PUBLIC FUNDS to represent the Board, ex-employees, employees, 1976-1981. [App S, T, pp. 42a, 43a]

3. Defendants BOARD OF EDUCATION, who presented a united defense with Brown, Heineke, Zielinski (not employees, agents of the Board) and moved for a summary judgment of dismissal when Defendant James Scanlon, Assistant Attorney, Agent of the Board had never been enjoined.

4. Defendant Thomas Brown with no evidence in the record that he had absolute immunity or was acting in a judicial capacity as a private attorney in defense of individuals in public service fired by the Illinois Legislature for misuse of personnel, funds as described herein.

If Mr. Van Gorkom was inconvenienced as alleged by alias summons and late service of subpoena, it was because of *his* failure and that of the Authority to publish any address but 228 North LaSalle, wherein the Law Department, under the direction of Attorney MICHAEL J. MURRAY circumvented the service of summons, not only on Defendant Van Gorkom, but also on their former assistant attorney, JAMES SCANLON, whose address had to be subpoenaed in order to serve summons, although he was alleged to be the representative of the CHICAGO BOARD OF EDUCATION. That the Law Department simply told the U.S. Marshall: "He doesn't work here anymore." And he has not been enjoined. . . .

That said Board through their attorneys has denied Plaintiff public records, 1976-1981 in violation of the Freedom of Information Act, State Records Act and has negligently suppressed misuse of public funds in overpayments of salary, private legal services to Defunct Board Members, employees, agents in violation of P.A. 81-1221.

That said "Authority" was created by the State (P.A. 81-1221 new paragraph 34A) and upheld by the Illinois Supreme Court 79 Ill. 2d 188 *Polich* v. *Chicago School Finance Authority*) and said authority has had sole control of ALL financial and legal obligations since Jan., 1980.

That to deny Plaintiff discovery of the bonded officer Jerome Van Gorkom or place a protective order a information that has been published in the Media, before the Legislative Committee investigating the Board, or in evidence in the HAY ASSOCIATES REPORT is to suppress evidence of criminal misconduct and establishes a dual system of justice for the Defendant Agencies and the Plaintiff Victim.

Wherefore, Plaintiff respectfully requests that these subpoenas be honored immediately pursuant to Title V, Section 552 and the recent U.S. Supreme Court decision: *Richmond Newspapers, Inc., Et. Al.* v. *Commonwealth of Virginia, Et. Al.*, #79-243, which granted certiorari to review dismissal of subpoenaed witnesses:

> "Expressly guaranteed freedoms of the First Amendment share common core purpose of assuring freedom of communication on matters relating to the functioning of government."

Judge Crowley (81 C 2411 *McCutcheon vs. Board, Heineke*) prejudicially erred in dismissing Defendants without public hearing, discovery or jury trial—without adequate notice to non-attorney Plaintiff in a specific suit filed under Title V, Section 552 for the public records proving PAUL HEINEKE'S CLAIM to $5,196.00 "Taxation of Costs" brought on April 22, 1981. Defendants may be entitled to return of costs in a Title VII action, but PAUL HEINEKE has no authority to collect for them or to order trial transcripts, etc. for the use of 17 attorneys involved in this action without the fees being established before trial.

That the Board of Education employees, represented by these private attorneys are the recipients of additional compensation, to which they are not entitled, 1976-1981 in the form of legal fees, court costs, which PAUL HEINEKE has tried to extort from the Petitioner 1) November, 1979 —Confiscation of Witness fees (app. $300) for witnesses who did not appear. (condoned by Judge Leighton)

2) December, 1979 Motion before Judge Leighton for legal fees for a Title VII action—wholly consolidated with other three actions for their full life in which the Board of Education employed and paid 17 attorneys.

3) A ridiculous counter-claim for a $1,000,000 bond for Petitioner to sue the City of Chicago and injunction against Petitioner suing THOMAS BROWN, PAUL HEINEKE, CHRISTINE ZIELINSKI because they alleged to be CITY OF CHICAGO CORPORATION COUNSEL [when they could produce no evidence of being BOARD OF EDUCATION CORPORATION COUNSEL]

Their counter-claim was belied by the Affidavit [App. E, p. 8a] of Stanley Garber, March 20, 1981—

Then on April 15, 1981 without prior notice to Petitioner as per affidavit of mailing [App. G, p. 11a] PAUL HEINEKE again with the signature of Judge Leighton, again attempted to extort $5,196 from Petitioner THAT HE IS NOT ENTITLED TO.

That Attorneys THOMAS BROWN, PAUL HEINEKE ordered the Court Reporters in the pre-trial and trial hearings of Judge George N. Leighton to print their names as CITY OF CHICAGO CORPORATIION COUNSEL (when they could produce no evidence that they were BOARD OF EDUCATION CORPORATION COUNSEL). That said transcript record was declared "moot" and struck by the Seventh Circuit Court of Appeals, #79-2568; that the same court made no decision on the statutory authority of THOMAS BROWN, PAUL HEINEKE to represent the Board and failed to review Judge Leighton's rulings as placed before the Court. . .

Wherefore, Petitioner now seeks a CHANGE OF VENUE from that Appellate Court of Judges Cummings, Bauer, Wood, Sprecher, *et. al.* involved in "ex parte" communications with Defendants in previous appeals— and the production of the public records demanded above of Judges Parsons, Leighton, Aspen, Sussman, and Crowley . . . or in the alternate a reversal of the Judgment Orders, and the relief requested granted.

Respectfully submitted,

ANABEL J. MCCUTCHEON, *Pro Se*
Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

CERTIFICATE OF SERVICE

I hereby certify that I submitted 40 copies of the foregoing Petition and mailed three copies to the Attorneys of Record, the Attorney General on September 9, 1981.

.....

Anabel J. McCutcheon

Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

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APPENDIX A

Feb. 10, 1981 Judge Aspen grants Defendants an extension of time with inadequate notice of motion to Plaintiff (mailed Feb. 9, 1981).

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge: Honorable Marvin Aspen
Cause No. 81 C 0098 Date February 10, 1981
Title of Cause:
Anabel J. McCutcheon v. Board of Education of the City of Chicago, et al.,
Brief Statement of Motion:
Defendants motion for extension of time to answer or otherwise plead.
The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).
Names and Addresses of moving counsel:
Michael J. Murray
228 North LaSalle, Room 312
Chicago, Illinois 60601
Representing:
Defendants.
Names and Addresses of other counsel entitled to notice and names of parties they represent:
Anabel J. McCutcheon
Apt. 3B, 1917 Tanglewood Drive
Glenview, Illinois 60025
Plaintiff.

Defendants Board of Education and Smith's motion for an extension of time to answer or otherwise plead to and including February 24, 1981 is allowed. Status hearing set for March 13, 1981 at 10:30 A.M.

/s/ Marvin E. Aspen

APPENDIX B

March 3, 1981 Judge Aspen denies Plaintiff any hearing, argument on her Motion #1: "To strike the Appearance of Thomas P. Brown for the Board of Education, Reverend Kenneth Smith as being without statutory authority (P.A. 81-1221 of the Chicago Finance Authority (304: 608 *SANCTIONS*) in sole control of the financial and legal obligations of the Board since Jan. 16, 1980"

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge: Honorable Judge Aspen

Cause No. 81 C 98 Date March 3, 1981

Title of Cause:
McCutcheon v. Board of Education

Brief Statement of Motion:
Motion to strike the appearance of Thomas P. Brown for the Board of Education, Reverend Kenneth Smith as being without the statutory approval (P.A. 81-1221) of the Chicago Finance Authority (chap. 122: 304:608 *SANCTIONS*) in sole control of the financial and legal obligations of the Board since Jan. 16, 1980

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:
Anabel J. McCutcheon, non-attorney
Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025

Representing:
Herself

Names and Addresses of other counsel entitled to notice and names of parties they represent:
Michael J. Murray
Attorney for the Board
228 North LaSalle (01)
Thomas Brown
221 North LaSalle Street (01)
Suite 1164

Received Feb. 24, 1981
H. Stuart Cunningham
United States District Court

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

APPENDIX C

March 3, 1981 Denial of subpoena for public documents of the Chicago Finance Authority—Jerome Van Gorkom

Subpoena Duces Tecum Case No. 81 C 98

UNITED STATES DISTRICT COURT
Northern District of Illinois

The President of the United States of America

To: Jerome Van Gorkham, Chairman Chicago School Finance Authority
90 Half Day Road
Lincolnshire, Illinois 60015

—GREETING:

We Command You, that all business and excuses being laid aside, you and each of you attend before Honorable Judge Aspen one of the Judges of the the United States District Court for said District, on the 3rd day of March, A.D. 1981 at 9:30 o'clock in the A.M. in Room 1941 United States Court House in Chicago, in said District, to testify and give evidence in a certain cause now pending and undetermined in said Court, wherein Anabel J. McCutcheon is plaintiff and Paul Heineke, Christine Zielinski, and Thomas Brown, private attorneys are Defendants on the part of said Plaintiff. And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, a certain

1. Budget, Line item, Unit, and object and person autorizing the use of public funds in the Financial Plan for Heineke, Zielinski, and Brown to represent The Board, Members, Agents, and Employees in Appellate and U.S. Supreme Court Actions, 80-1482, 79-2568, 80-724 against Anabel J. McCutcheon.

2. Certified Copy of the Chicago Finance Authority Approval of the legal representation of Heineke, Zielinski (Sec. 304: 608 Sanctions)

Thomas P. Brown

3. Certified Copy of the Report of Salary Administrator, Thomas Finnegan or his superior of the $10,000 in overpayment of principal Karl Siewers as per his testimony Dec. 17, 1979-Feb. 25, 1980

OR

4. A sworn affidavit that the above items do not exist. together with all copies, drafts, and vouchers relating to the said documents, and all other documents, letters, and paper writings whatsoever, that can or may afford any information or evidence in said cause. And this you shall in nowise omit, under the penalty of the law in that case made and provided.

To the Marshal of the Northern District of Illinois to execute and return in due form of law.

H. Stuart Cunningham

[SEAL] Clerk

BY _____

Deputy Clerk

Dated: _____

APPENDIX D

March 3, 1981 Denial of subpoena for public documents of the Chicago Board of Education—Michael J. Murray

Subpoena Duces Tecum Case No. 81 C 98

UNITED STATES DISTRICT COURT
Northern District of Illinois

The President of the United States of America

To: Michael J. Murray, Attorney For The Board
Keeper of the Records Chicago Board of Education
228 North LaSalle Street
Chicago, Illinois 60601

—GREETING:

We Command You, that all business and excuses being laid aside, you and each of you attend before Honorable Judge Aspen one of the Judges of the the United States District Court for said District, on the 3rd day of March, A.D. 1981, at 9:30 o'clock in the A.M. in Room 1941 United States Court House in Chicago, in said District, to testify and give evidence in a certain cause now pending and undetermined in said Court, wherein Anabel J. McCutcheon is plaintiff and Paul Heineke, Christine Zielinski, *Et. Al.* are Defendants Defendant, on the part of said Plaintiff. And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, a certain

1. a certified copy of the Board Report and approval of a contract with private attorneys Heineke, Zielinski or the Law Firm of Heineke and Shrader to represent the Board, members of the Board, employees, agents in federal actions herein against Anabel J. McCutcheon June 24, 1977-Jan. 16, 1980.

2. pay records of all Board funds paid to private attorneys Heineke, Zielinski, Sept., 1976-to date.

3. pay records of Salary Administrator, Thomas Finnegan and name of his superior, who approved his paid vacation, Nov. 1-Nov. 13, 1979 out of the jurisdiction of the Court.

4. a certified copy of the report of Salary Administrator, Thomas Finnegan to the Chicago Schools Finance Authority of the overpayment of $10,000 salary to one Karl Siewers in accordance with his testimony in 76 C 4763 Dec. 17, 1979 to April 4, 1980.

5. The present whereabouts of James Scanlon, who was a subordinate in the Law Department.

together with all copies, drafts, and vouchers relating to the said documents, and all other documents, letters, and paper writings whatsoever, that can or may afford any information or evidence in said cause. And this you shall in nowise omit, under the penalty of the law in that case made and provided.

To the Marshal of the Northern District of Illinois to execute and return in due form of law.

H. Stuart Cunningham

[SEAL] Clerk

BY _____

Deputy Clerk

Dated: _____

APPENDIX E

March 20, 1981—Affidavit in Answer to Plaintiff's Motion to Compel Answer of the City of Chicago—subpoena, Mayor Jane Byrne, City Corporation Counsel

I, Stanley Garber, being first duly sworn on oath, deposes and states as follows:

I am the Corporation Counsel of the City of Chicago;

I am in receipt of a Subpoena Duces Tecum served upon my office;

Such Subpoena requests the production of certain records or in the alternative, a sworn affidavit that requested records do not exist.

Pursuant to such Subpoena I have caused an examination of records maintained by my office to determine whether or not the requested records exist. This examination indicated that:

a. Attorneys Paul Heineke, Christine Zielinski and Thomas Brown are not employed as attorneys by the Office of the Corporation Counsel of the City of Chicago and to my knowledge were never so employed;

b. We have no pay records for any of the three attorneys indicated above.

/s/ Stanley Gerber
Stanley Gerber
Corporation Counsel of
the City of Chicago

Subscribed And Sworn to
before me this 2nd day
of March, 1981.

Notary Public

MAR 3 1981
Judge Marvin E. Aspen
U.S. District Court

APPENDIX F

April 2, 1981 Status Hearing Before Magistrate Sussman:

Plaintiff's Motion for a tro against private attorney, Thomas Brown representing the Chicago Board of Education without appointment, public contract entered and continued until May 11, 1981.

Plaintiff's Motion to strike the answer of Defendant Van Gorkom to quash the subpoena is entered and continued to May 11, 1981.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Magistrate: Honorable Carl B. Sussman (Jg. Aspen)

Cause No. 81 C 98 Date April 2, 1981

Title of Cause:
Anabel J. McCutcheon v. Board of Education, City of Chicago, et al.

Brief Statement of Motion:
Status hearing

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:

Representing:

Names and Addresses of other counsel entitled to notice and names of parties they represent:

Status hearing held. Plaintiff's motion to file briefs instanter and for continuance is granted. Plaintiff's motion for a temporary restraining order against private attorney Thomas Brown representing the Chicago Board of Education without appointment, Public Contract and motion to strike the answer of defendant Van Gorkom to quash the subpoena is entered and continued to May 11, 1981 at 9:30 a.m. at which time oral argument will be heard.

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

(Filed April 8, 1981)

APPENDIX G

April 15, 1981 "Taxation of Costs" entered by Judge George N. Leighton without adequate notice to Plaintiff—no tax bill mailed to Plaintiff as per affidavit of Paul Heineke.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable George N. Leighton

Cause No. 76 C 4763 Date April 15, 1981

Title of Cause:
Anabel J. McCutcheon v. Board of Education

Brief Statement of Motion:
Taxation of costs

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:

Representing:

Names and Addresses of other counsel entitled to notice and names of parties they represent:

Ordered that hearing regarding the taxation of costs is set for April 22, 1981 at 9:30 a.m. before the clerk in room 2132.

Leighton, J.

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

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Form A. O. 133 (6/76)

BILL OF COSTS

United States District Court

for the

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

PRELIMINARY COPY

ANABEL J. McCUTCHEON,

Plaintiff,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO, et al.,

Defendants.

Docket Number

76-C-4736

Judgment having been entered in the above entitled action on the 28th day of February, 1980, against ANABEL J. McCUTCHEON the clerk is requested to tax the following as costs:

BILL OF COSTS

Fees of the clerk	$ None
Fees of the marshal	None
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	5,199.30 Kay Arbeit
Fees and disbursements for printing	761.98
Fees for witnesses (itemized on reverse side)	None
Fees for exemplification and copies of papers necessarily obtained for use in case	
Docket fees under 28 U. S. C. 1923	
Costs incident to taking of depositions	729.60
Cost as shown on Mandate of Court of Appeals	
Other Costs (Please itemize)	
Total	$ 6,689.08

State of Illinois
County of C O O K } ss:

I, Paul H. Heineke, do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to Miss Anabel J. McCutcheon with postage fully prepaid thereon.

Please take notice that I will appear before the Clerk who will tax said costs on , 19 at

Attorney for Board of Education of the City of Chicago

Subscribed and sworn to before me this day of A. D. 1981

at

Notary Public.

Costs are hereby taxed in the amount of $ this day of , 19 , and that amount included in the judgment.

Clerk.

By Deputy Clerk.

NOTE: SEE REVERSE SIDE FOR AUTHORITIES ON TAXING COSTS.

Exhibit "C" page 1 of 3

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Witness Fees (computation, cf. 28 U. S. C. 1821 for statutory fees)

Name and Residence	Attendance: Days	Attendance: Total Cost	Subsistence: Days	Subsistence: Total Cost	Mileage: Miles	Mileage: Total Cost	Total Cost Each Witness
NONE							
					TOTAL		

NOTICE

Section 1924, Title 28, U. S. Code (effective September 1, 1948) provides:

"Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28 which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:

Rule 54 (d)

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

Rule 6 (e)

"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

Rule 58 (In Part)

"Entry of the judgment shall not be delayed for the taxing of costs."

Exhibit "C" page 2 of 3

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KAY ARBOIT, Official Reporter, United States District Court

McCUTCHEON v. BOARD OF EDUCATION of the CITY OF CHICAGO, et al

Transcript of proceedings:

	April 4, 1980	$ 8.00	
	Feb. 15, 1980	10.00	
	Feb. 15, 1980	2.00	
	Jan. 31, 1980	92.50	
Nov. 2 &	Dec. 7, 1979	55.50	
	Nov. 30, 1979	55.00	
	Sept.14, 1979	55.00	
	Aug. 27, 1979	52.50	
	July 20, 1979	30.00	
	July 13, 1979	60.00	
	July 6, 1979	35.00	
	Feb. 9, 1979		
	Jan. 19, 1979	21.00	
	Jan. 19, 1979	25.50	
	Dec. 15, 1978	21.00	
	Nov. 17, 1978	28.50	
	Nov. 3, 1978	37.50	$ 589.00

Testimony in hearing for a Preliminary Injunction - June 24, 1977 — 272.50

Transcript of proceedings (at trial):
Dec. 17, 18, 19, 20, 26, 27, 1979
Jan. 2, 3, 7, 8, 1980
Jan. 21 and 24, 1980 — 4,335.00

$5,196.50

Exhibit "C" page 3 of 3

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6-4

RULE 45. Taxation of Costs.

A. Time for filing Bill of Costs. Within Ten days of the entry of a judgment allowing costs, the prevailing party shall file a bill of costs with the Clerk and serve a copy of the bill on each adverse party, except that where the United States is the prevailing party it shall have thirty days to file said bill and serve copies. If the bill of costs is not filed within the ten days, costs other than those of the Clerk, taxable pursuant to 28 USC 1920, shall be deemed waived. The Court may, on motion filed within the time provided for the filing of the bill of costs, extend the time for filing the bill.

B. Costs of Stenographic Transcripts. Subject to the provisions of Federal Rules of Civil Procedure 54(d), the expense of any prevailing party in necessarily obtaining all or any part of a transcript for use in the case, for purposes of a new trial, or amended findings, or for appeal shall be a taxable cost against the adverse party. If in taxing costs the clerk finds that a transcript or deposition was necessarily obtained, only the costs of the original at regular copy rates as fixed by this court and in effect at the time the transcript was filed shall be allowed. Costs of additional copies of transcripts or depositions or costs of transcripts based on daily rates shall not be allowed unless previously provided for by order of court.

C. Bond Premiums. If costs shall be awarded by the court to either or any party then the reasonable premiums or expenses paid on all bonds or stipulations or other security given by the party in that suit shall be taxed as part of the costs of that party.

//

JUN 25 1976

APPENDIX H

May 11, 1981 Ruling of Magistrate Sussman: "oral argument is reset to May 19, 1981 at 9:30 a.m."

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Magistrate, Honorable Carl B. Sussman

Cause No. 81 C 98 Date May 11, 1981

Title of Cause:
Anabel McCutcheon v. Board of Education of City of Chicago

Brief Statement of Motion:
The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:
Representing:

Names and Addresses of other counsel entitled to notice and names of parties they represent:

By agreement of the parties, oral argument is reset to May 19, 1981, at 9:30 a.m.

Carl B. Sussman
(Filed May 12, 1981)

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

APPENDIX I

May 12, 1981 Ruling of Judge Aspen: "Enter plaintiff's petition for a Change of Venue from Judge Marvin Aspen, Magistrate Carl Sussman . . ." Defendants to file a response on or before May 19, 1981. Plaintiff to file a reply by May 22, 1981.

Name of Presiding Judge, Honorable Judge Marvin Aspen, Magistrate Sussman

Cause No. 81 C 98 Date May 12, 1981

Title of Cause:

Petition For A Change Of Venue or in the alternate an injunction, reprimand, striking of motions filed to Judge Aspen during the continuance granted by Judge Sussman, April 2,-May 11, 1981

Brief Statement of Motion:

McCutcheon v. Board of Education, Chicago Finance Authority

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:

Anabel J. McCutcheon, Non-Attorney
Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025

Representing:

Names and Addresses of other counsel entitled to notice and names of parties they represent:

Michael J. Murray
Attorney for the Board

Attorneys Lundy, Fischer
Schiff, Hardin, & Waite
7200 Schiff Tower
233 South Wacker
Chicago, Illinois 60606

Raymond Carroll
Suite 1164: 22 N. LaSalle
Chicago, Illinois 60601

Thomas Brown
Suite 1164; 221 N. LaSalle
Chicago, Illinois 60601

Waive the right of argument before Judge Aspen
Request oral argument before Magistrate Sussman

Enter plaintiff's petition for a change of venue from Judge Marvin Aspen, Magistrate Carl Sussman or, in the alternate an injunction against defendants. Defendants to file a response on or before May 19, 1981. Plaintiff to file a reply by May 22, 1981.

Marvin E. Aspen

DOCKETED MAY 13, 1981

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

APPENDIX J

May 12, 1981 Referral to the Executive Committee by Magistrate Sussman, regardless of the briefing order of Judge Aspen—and the oral argument reset to May 19, 1981

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Magistrate, Honorable Carl B. Sussman

Cause No. 81 C 98 Date May 12, 1981

Title of Cause:

Anabel J. McCutcheon v. Board of Education of the City of Chicago, et al.

Brief Statement of Motion:

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:

Representing:

Names and Addresses of other counsel entitled to notice and names of parties they represent:

The above-captioned matter is referred to the Executive Committee with the recommendation that it be reassigned to another magistrate of this court for the following reason:
Plaintiff has asserted in a recent motion that "This Court has established a privileged class of defendants Board of Education . . . . . ." which is not correct. Therefore, plaintiff's motion for a change of venue from this magistrate is hereby granted.

Carl B. Sussman
DOCKETED MAY 19, 1981.

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

APPENDIX K

May 14, 1981 Ruling of Judge Parsons: Change of Venue denied without notice to Plaintiff, without briefing schedule above.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable James B. Parsons

Cause No. 81 C 89 Date May 14, 1981

Title of Cause:

Anabel J. McCutcheon v. Board of Education of the City of Chicago, et al.

Brief Statement of Motion:

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended.)

Names and Addresses of moving counsel:

Representing:

Names and Addresses of other counsel entitled to notice and names of parties they represent:

For the Executive Committee:

Matter referred to the Executive Committee with the recommendation that the above case be reassigned to another Magistrate of this Court is denied.

James B. Parsons
DOCKETED MAY 19, 1981

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

APPENDIX L

May 20, 1981 Notice of Appeal of the unusual ruling of Judge James B. Parsons Magistrate Sussman.

IN THE
UNITED STATES DISTRICT COURT FOR
The Northern District Of Illinois
Eastern Division

No. 81 C 98

ANABEL J. McCUTCHEON,

Plaintiff,

v.

CHICAGO BOARD OF EDUCATION, CHICAGO SCHOOLS FINANCE AUTHORITY, PAUL H. HEINEKE, *Et Al.*

Defendants.

Judge MARVIN ASPEN
Magistrate CARL SUSSMAN

Chief Justice JAMES B. PARSONS
Judge GEORGE N. LEIGHTON
(76 C 4763)

NOTICE OF APPEAL

Please Take Notice that pursuant to Title V, Section 552 and 28 U.S.C. 1651 (a) Plaintiff will file for a Petition for a Writ Extraordinaire against the ruling of Chief Justice James B. Parsons made prematurely on May 14, before Plaintiff was permitted to "brief" on May 22 her motion for a Change of Venue before Judge Aspen, to whom Defendants filed six motions (in five weeks) to harass a non-attorney during a continuation granted by Magistrate Sussman.

On May 19, Plaintiff was not permitted oral argument (as requested) or to present her motion at the

same time three Defendant Attorneys were permitted to present argument "to explain" before the same magistrate, who had reprimanded her on March 23, for seeking redress Without An Attorney and ordered her to answer (a 2nd time) Defendant's motion to Quash A Subpoena For The Public Documents From The Chicago Schools Finance Authority.

In addition, Plaintiff will submit a copy of an April 22, 1981 "taxation of costs" from the Honorable Judge George N. Leighton's judgment of Feb. 28, *1980* to favor Defendant and Attorney Heineke and the falsified date of March 20, 1981 entered "By the Clerk".

Anabel J. McCutcheon

Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
312-328-1630

APPENDIX M

May 29, 1981 Status Hearing for May 29, 1981 stricken and reset to June 12, 1981.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Marvin E. Aspen

Cause No. 81 C 0098 Date May 29, 1981

Title of Cause:
McCutcheon v. Board of Education, et al

Brief Statement of Motion:
ORDER

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:

Representing:

Names and Addresses of other counsel entitled to notice and names of parties they represent.

On the Court's own motion, status hearing set for May 29, 1981 is stricken and reset to June 12, 1981 at 10:30 a.m.

Marvin E. Aspen
JUN 1, 1981

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

APPENDIX N

June 1, 1981 Decision of Marvin E. Aspen with inadequate notice of hearing to Plaintiff by Defendants (mailed after hearing).

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable Marvin E. Aspen
Cause No. 81 C 0098 Date June 1, 1981
Title of Cause:
McCutcheon v. Board of Education, et al
Brief Statement of Motion:
ORDER

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:
Representing:
Names and Addresses of other counsel entitled to notice and names of parties they represent.

Plaintiff's motion for a change of venue is denied. Finance Authority's and Van Gorkom's motions for summary judgment of dismissal are granted. Heineke's Zielinski's and Brown's motions for summary judgment are granted. Board of Education's and Smith's motions for summary judgment are granted. Board of Education and Heineke's motions for judgment on their counterclaim are denied. (draft) Status hearing set for June 12, 1981 is stricken.

Marvin E. Aspen

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 81 C 0098

ANABEL J. McCUTCHEON,

Plaintiff,

v.

BOARD OF EDUCATION, CITY OF CHICAGO, KENNETH SMITH, JAMES SCANLON, CHICAGO FINANCE AUTHORITY, JEROME VAN GORKOM, PAUL H. HEINEKE, CHRISTINE, ZIELINSKI, and THOMAS BROWN,

Defendants.

MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, District Judge:

This is one of a series of lawsuits filed by plaintiff Anabel J. McCutcheon ("McCutcheon"), *pro se*, against the Board of Education of the City of Chicago ("the Board"), and a host of other parties who have been affiliated with the Board in the past, arising out of McCutcheon's termination as a teacher and principal in the Chicago public school system effective October 5, 1977.[1] This matter is presently before the Court on the defendants' motions to dismiss or, in the alternative, for summary judgment on a variety of grounds. For the reasons set forth below, the defendants' motions will be granted.

In the instant action, McCutcheon alleges that the defendants—the Board and Board President Reverend Kenneth Smith ("Smith"); the Chicago School Finance Authority ("the Finance Authority") and Finance Au-

[1] McCutcheon's suspension and eventual termination after a hearing were upheld by the Circuit Court of Cook County (Judge Nordberg presiding) in McCutcheon v. Board of Education, No. 77 L 21626 (October 22, 1979), *affirmed*, No. 79-17788, ... Ill.App.3d ..... (1st Dist. 1979).

thority Chairman Jerome Van Gorkom ("Van Gorkom"); and attorneys James Scanlon ("Scanlon"), Paul Heineke ("Heineke"), Christine Zielinski ("Zielinski"), and Thomas Brown ("Brown"), all of whom have represented the Board and Board employees in legal proceedings instituted by McCutcheon since 1976—acted individually and/or conspired together "to terminate Plaintiff's employment, to deprive her of a means of livelihood, and to deny her a public jury trial in the matter of her wrongful dismissal." Complaint at ¶ 13. McCutcheon further alleges that defendants Heineke, Zielinski, and Brown have continually represented the Board and other persons without legal authorization, that they have suppressed evidence to which she claims to be entitled, and that they have harassed and intimidated her in their various encounters in state and federal court since 1976. Complaint at ¶ ¶ 14, 15, 16. McCutcheon also claims that the Board, Smith, the Finance Authority, and Van Gorkom have failed to terminate the Board's allegedly unlawful contracts for legal representation with Heineke, Zielinski, and Brown and that they have failed to recover monies spent by the Board for such alleged "misrepresentation." Complaint at ¶ ¶ 17, 18, 19. The actions of all the defendants are alleged to be in violation of 42 U.S.C. §§ 1983, 1985, and jurisdiction is asserted under 28 U.S.C. § 1343.[2]

McCutcheon prays for a writ of mandamus restoring her to her previous position as principal of the Audubon school with back pay and damages, and an injunction against "any secret, retroactive contracts with Attorneys Heineke, Brown, and Zielinski and any members of their Law Firms" together with recovery to the Board of all funds paid to these attorneys between 1976 and 1980. McCutcheon also seeks the reinstatement of Nancy Gottlieb Pearson, not a party to this suit, to her former position as a teacher at the Audubon School.

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[2] McCutcheon also asserts jurisdiction under the so-called "Shakman Decree" in Shakman v. Democratic Organization, 356 F.Supp. 1241 (N.D. Ill. 1972). However, that case is completely irrelevant to the case at bar.

McCutcheon's Motion For a Change of Venue

As a threshold matter, McCutcheon has moved for a change of venue apparently on the ground that the Court is personally prejudiced or biased against her. 28 U.S.C. § 144. The gravaman of her motion seems to be her perception that she has been treated differently than the defendants by the Court during the relatively short gestation of this case. McCutcheon offers no evidence to support this claim; nor is such claim correct. McCutcheon, proceeding *pro se,* has been treated by the Court precisely as are other defendants, represented by legal counsel. Moreover, at each step, the Court has taken time to explain to McCutcheon the procedures followed in our federal practice and the Court has urged defense counsel to proceed with the same understanding.

In any event, it is well-settled that a judge may not be disqualified for bias or prejudice alleged to have developed during the course of the proceeding in which disqualification is sought. *United States* v. *Grinnell Corp.,* 384 U.S. 563, 583, 86 S.Ct. 1698, 1710 (1966); *Wolfson* v. *Palmieri,* 396 F.2d 121, 124 (2d Cir. 1968). The party seeking disqualification or recusal of the trial judge must point to specific incidents or statements by the judge said to evidence bias or prejudice arising from sources outside the courtroom. McCutcheon has failed to identify any such incidents or statements by the Court in support of her allegations of bias, other than her general dissatisfaction with the amount of paper—motions, memoranda, counter-claims, subpoenas, and summonses—that her lawsuit has generated. Accordingly, McCutcheon's motion for a change of venue based upon the Court's alleged prejudice or bias is denied.[3] It is so ordered.

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[3] McCutcheon has also moved for a change of venue from Magistrate Sussman, who has been supervising discovery in this matter. That motion was referred to the Executive Committee by Magistrate Sussman and was denied by Minute Order dated May 14, 1981. (Parsons, J).

Van Gorkom's and the Finance Authority's Motions

Van Gorkom moves to dismiss the complaint as to himself for lack of subject matter jurisdiction, Fed.R.Civ.P. 12(b)(1), and for failure to state a claim upon which relief can be granted, Fed.R.Civ.P. 12(b)(6), or, in the alternative, for summary judgment pursuant to Fed.R.Civ.P. 56. The Finance Authority joins in Van Gorkom's motion asserting the additional ground of insufficient service of process, Fed.R.Civ.P. 12(b)(5), in support of dismissal.

The claims against Van Gorkom and the Finance Authority in McCutcheon's complaint are identical, and they fail to state a cause of action under 42 U.S.C. § 1983 or § 1985 against either defendant. The alleged wrongs suffered by McCutcheon, the termination of her employment, the denial of a public jury trial and access to appeal, occurred well before the creation of the Finance Authority, of which Van Gorkom is chairman, in January, 1980. Neither the Finance Authority nor Van Gorkom may be held responsible under 42 U.S.C. § 1983 for any injury to McCutcheon that pre-dates the creation of the agency and the appointment of Van Gorkom since they could not have acted under color of state law prior to that date. Moreover, Van Gorkom and the Finance Authority may not be held responsible for not terminating the asserted contracts between the Board and attorneys Heineke, Zielinski, and Brown after January, 1980, since Ill.Rev.Stat. ch. 122, §§ 34A-401 (1980) specifically provides "that the Authority shall have no power to impair any existing contract or obligation of the Board." Since McCutcheon's prior litigation against the Board was virtually completed in 1979, the Finance Authority and Van Gorkom could have done nothing to either help or harm McCutcheon by the time they assumed their duties in January, 1980. Similarly, litigation subsequent to that date is covered by the renewed contract for legal representation entered in

April, 1979, prior to the creation of the Finance Authority and Van Gorkom's appointment.[4]

McCutcheon has also failed to state a claim under 42 U.S.C. § 1985. She has not alleged any class-based discriminatory animus as required under section 1985. *See Hampton* v. *Hanrahan,* 600 F.2d 600 (7th Cir. 1979), *reversed on other grounds,* 446 U.S. 754 (1980). Even assuming that McCutcheon's "class of one" would qualify for protection under that section, her "class" did not exists until after the alleged acts of the defendants. Thus, as the Seventh Circuit recognized in *Askew* v. *Bloemaker,* 548 F.2d 673, 678 (7th Cir. 1976), "no 'class-based discriminatory animus' could have motivated the defendants' actions, and the plaintiff [has] not met the prerequisites to a § 1985(3) claim under *Griffin* [v. *Breckenridge,* 403 U.S. 88, 102 (1971)]."

Accordingly, the Finance Authority's and Van Gorkom's motions for summary judgment of dismissal are

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[4] As set forth more fully in the discussion of the Board's and Smith's motions for summary judgment, *infra,* the Board retained Heineke, Zielinski, and Brown pursuant to its statutory obligation to insure or indemnify against costs of defense and liability in certain classes of actions brought against the Board or Board employees. The attorneys were initially retained for a three-year period running from April 21, 1976, to March 31, 1979. The contract was subsequently renewed and extended through March 31, 1982. Retention of counsel was on a "per occurrence" basis so that the time of the occurrence rather than the filing of the lawsuit is the controlling factor. Representation was to extend throughout the appellate process. *See* Affidavit of Robert L. Ward, Insurance Administrator of the Board (March 13, 1980).

granted, there being no genuine issue of fact material to a judgment in their favor.[5] It is so ordered.

Heineke's, Zielinski's, and Brown's Motions

Heineke, Zielinski, and Brown[6] have moved for summary judgment on the grounds that they did not act under color of state law for purposes of McCutcheon's claim under 42 U.S.C. § 1983 and that McCutcheon has not alleged any class-based discriminatory animus for purposes of her claim under 42 U.S.C. § 1985. The basis of McCutcheon's claims against these three attorneys is their representation of the Board, its members, or its employees in numerous lawsuits filed by McCutcheon over the past several years.[7] As succinctly stated by Judge Perry of this Court several years ago in *Dear* v. *Rathje*, 391 F.Supp. 1, 7-8 (N.D. Ill. 1975), "[i]t has long been held that a lawyer who represents a client as an attorney and is not a party in interest does not act under color

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[5] The Court has assumed for the purpose of resolving these motions on the merits that the Finance Authority was properly served with process at the commencement of this action. It should be noted, however, that McCutcheon's attempt to effect service on the Authority by serving its attorneys, Schiff, Hardin & Waite, with an alias summons is insufficient as a matter of law under either Fed.R.Civ.P. 4(d)(6) or Ill.Rev.Stat. ch. 110, § 18 (1979).

[6] McCutcheon moved for a default judgment as to Brown for his failure to answer the the complaint or otherwise plead within the requisite time period. Brown has since answered the complaint thereby rendering McCutcheon's motion moot.

[7] Although McCutcheon also named James Scanlon, an assistant attorney in the Law Department of the Board, as a defendant herein, Scanlon has apparently not been served with process and he is not now a party to this case. Moreover, McCutcheon seeks no relief as to Scanlon and the complaint fails to state a claim against him.

of law within the meaning of the Civil Rights Acts." *See also Hansen* v. *Ahlgrimm*, 520 F.2d 768, 770 (7th Cir. 1975); *Skolnick* v. *Martin*, 317 F.2d 857 (1963). McCutcheon's conclusory allegations of conspiracy involving some state actors are insufficient to overcome this defect. *Hansen* v. *Ahlgrimm, supra.* In addition, McCutcheon's claims against these defendants under section 1985 fail for the reasons set forth above with respect to the section 1985 claims against Van Gorkom and the Finance Authority. *See Askew* v. *Bloemaker, supra*, 548 F.2d at 678.

Accordingly, Heineke's, Zielinski's, and Brown's motions for summary judgment are granted. It is so ordered.

The Board's and Smith's Motions

The Board and Smith move for summary judgment pursuant to Fed.R.Civ.P. 56 on the grounds that McCutcheon has not stated a claim against them upon which relief can be granted and that any claim that could be inferred from the complaint arises from her termination as a Board employee in 1977, which claim is barred by the doctrines of res judicata and collateral estoppel in light of prior state and federal decisions dealing with the same parties and issues. The Court agrees.

The only claim raised in the complaint against the Board or Smith appears to be that they violated an alleged "duty" to "void any secret or retroactive agreements made wtih defendant Attorneys Heineke, Brown, Zielinski and to direct defendant Attorney James Scanlon to terminate his defense of Board Employees." Complaint ¶¶ 17, 18. According to the Illinois statutory scheme, the Board is required to insure or indemnify against suits against the Board or Board employees arising from, among other claims, any "alleged violation of civil rights occurring on or after September 5, 1967." Ill.Rev.Stat. ch. 122, § 34-18.1 (1979). Pursuant to this statutory directive, the Board hired attorneys Heineke, Zielinski, and Brown under a contract which originally ran from April 1, 1976, through March 31, 1979, and which was renewed

for an additional three-year period ending March 31, 1982. *See generally* Affidavit of Robert L. Ward, Insurance Administrator of the Board of Education of the City of Chicago (March 13, 1981) and footnote 4, *supra.* There is absolutely no support stated in the complaint for McCutcheon's allegations that the Board or Smith wrongfully failed to void any "secretive or retroactive contracts," Complaint at ¶ 17, or that they "wilfully and maliciously" incurred liability for attorneys' fees and costs, Complaint at ¶ 18. Thus, the complaint fails to state a claim against the Board or Smith, even under the liberal federal pleading standards.

Moreover, to the extent that McCutcheon is attempting to relitigate her underlying claims that she was wrongfully terminated from her position as principal of the Audubon school, decided adversely to her in *McCutcheon* v. *Preston,* No. 78 C 3955 (N.D. Ill., Nov. 26, 1979) and *McCutcheon* v. *Board of Education,* No. 78 C 3899 (N.D. Ill., Nov. 28, 1979) (Leighton, J.), in addition to various state proceedings, such an attempt is barred by principles of res judicata and collateral estoppel. *Samuel C. Ennis & Co., Inc.* v. *Woodmar Realty Co.,* 542 F.2d 45, 49 (7th Cir. 1976), *cert. denied,* 429 U.S. 1096 (1977). Accordingly, the Board's and Smith's motions for summary judgment are granted. It is so ordered.

Heineke's and the Board's Motion for Judgment on Their Counterclaim

As a final matter, certain defendants seek judgment on their counterclaim for an injunction restraining McCutcheon from filing any more motions in the present action and permanently enjoining the filing of any future actions against these defendants. They argue that "[t]he axiom that a person should have free access to the judicial process must be balanced against that person's abuse of the judicial process." Memorandum in Support of Counterclaim at 9. *See Gutman* v. *Gutman,* 65 Ill.App.2d

44, 212 N.E.2d 699 (1st Dist. 1965); *Ziebell* v. *Village of Posen*, 257 Ill.App. 32 (1st Dist. 1930); *Adams* v. *Oberndorf*, 121 Ill.App. 497 (1st Dist. 1905).

While we would admonish McCutcheon to refrain from filing any subsequent lawsuits raising the issues considered in this opinion, in the Court's view there are other less drastic remedies for any future abuse of judicial process than the rather broad ranging injunction sought by the defendants herein. Should McCutcheon persist in relitigating the issues disposed of in this action, we would assume that defendants would bring this opinion to the attention of the trial court in support of their motions for remedies. Accordingly, the motion for judgment on the counterclaim is denied. It is so ordered.

/s/ Marvin E. Aspen
Marvin E. Aspen
United States District Judge

DATED: 6/1/81

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

Civil Action File No. 81 C 0098

McCUTCHEON, Anabel J.

vs.

BOARD OF EDUCATION, et al

JUDGMENT

This action came on for trial (hearing) before the Court, Honorable Marvin E. Aspen, United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered.

It is Ordered and Adjudged

Plaintiff's motion for a change of venue is denied. Finance Authority's and Van Gorkom's motions for summary judgment of dismissal are granted. Heineke's Zielinski's and Brown's motions for summary judgment are granted. Board of Education's and Smith's motions for summary judgment are granted. Board of Education and Heineke's motions for judgment on their counterclaim are denied. (draft)

/s/ H. Stuart Cunningham
H. Stuart Cunningham
Clerk

_____

Deputy Clerk of Court

Dated at Chicago, Illinois,
this 1st day of June, 1981.

APPENDIX O

June 5, 1981 Decision of Judge Crowley (81 C 2411) with inadequate notice of hearing to Plaintiff (mailed after hearing).

Name of Presiding Judge, Honorable John P. Crowley

Cause No. 81 C 2411 Date 6/5/81

Title of Cause:

McCutcheon v. Board of Ed. & Heineke

Brief Statement of Motion:

Defendants' Motion to Dismiss.

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel:

Thomas P. Brown
221 N. LaSalle St.
Chicago, Ill. 60601

Michael J. Murray
Board of Education
Law Dept.
228 N. LaSalle St.
Chicago, Ill. 60601

Representing:

.....

Names and Addresses of other counsel entitled to notice and names of parties they represent:

Anabel J. McCutcheon
2653 Stewart Ave.
Evanston, Ill.

Hearing on defendants' motion to dismiss the complaint held. For the reasons stated in open court, the motion to dismiss is granted.

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

APPENDIX P

July 10, 1981 Payment of Docketing Fees upon first Demand.

Apt. 3B: 1917 Tanglewood
Glenview, Illinois 60025
July 10, 1981

HONORABLE THOMAS STRUBBE,
CLERK OF THE SEVENTH CIRCUIT
COURT OF APPEALS, 27th Floor
219 South Dearborn Street
Chicago, Illinois 60604

Re: Docket Fee for 81-1987
PAID IMMEDIATELY UPON DEMAND
RECEIVED JULY 9, 1981

Please be advised that I submitted a $70.00 check to H. STUART CUNNINGHAM, CLERK OF THE DISTRICT COURT—following receipt of a June 23, 1981 communication—on July 9, 1981.

That said Clerk or his subordinates requested no docketing fees at the time of filing.

That in the same mail I received a June 25, 1981 FINAL ORDER from the 7th Circuit Court of Appeals in 78 C 2568—untimely mailed (or deliberately backdated) to deny me the right of a rehearing.

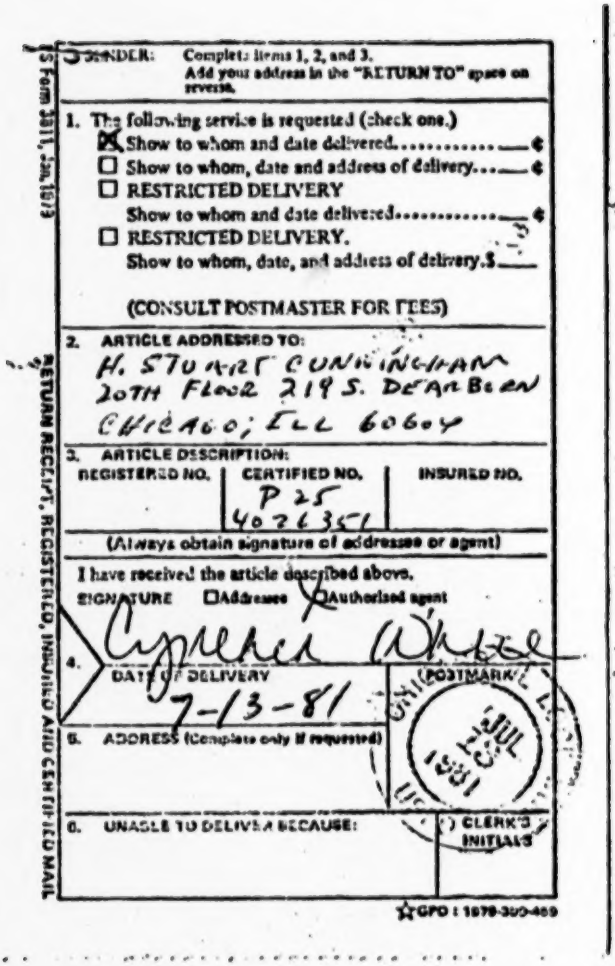
I beg your indulgence in the accepting of the docket fee UPON THE FIRST IMMEDIATE DEMAND—as these untimely mailings from your office have increased since the filing of a civil suit (naming CHARLIE WEBB) for alteration,"loss", and blatant refusal to submit pertinent documents to the 7th Circuit Court and the U.S. Supreme Court—the "loss" being 40 Court Trial Transcripts—evidence of the criminal misuse of funds by Defendants Board of Education placed before the Honorable

Judge George C. Leighton, former City of Chicago Corporation Counsel.

Thank you for your kind consideration.

/s/ Anabel J. McCutcheon
Anabel J. McCutcheon

CC: William French Smith
Department of Justice
President Ronald Reagan
The White House
H. Stuart Cunningham



PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- [X] Show to whom and date delivered..... ¢
- [ ] Show to whom, date and address of delivery.... ¢
- [ ] RESTRICTED DELIVERY
  Show to whom and date delivered..... ¢
- [ ] RESTRICTED DELIVERY.
  Show to whom, date, and address of delivery.$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
H. STUART CUNNINGHAM
20TH FLOOR 219 S. DEARBORN
CHICAGO, ILL 60604

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	P 25 407 635 1	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE [ ] Addressee [X] Authorized agent

Cynthia White

4. DATE OF DELIVERY
7-13-81

(POSTMARK)
JUL 23 1981

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

( ) CLERK'S INITIALS

☆GPO : 1979-300-409

APPENDIX Q

July 14, 1981 Second Demand for Fees from* Charlie Webb, Deputy Clerk of USCA.

CIRCUIT RULE 26(c) NOTICE

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
219 South Dearborn Street
Chicago, Illinois 60604

Thomas F. Strubbe
Clerk
312-435-5850

81-1987

14 July 1981

Anabel J. McCutcheon
1917 Tanglewood Drive
Apartment 3B
Glenview, IL 60025

Dear Ms. McCutcheon:

You have failed to pay the required $65 docketing fee to the U.S. District Court. Therefore, you must do one of two things or your case will be dismissed.

1. pay the required $65 docketing fee to the U.S. District Court, or
2. come into the U.S. District Court with a motion to proceed on appeal in forma pauperis, which motion must be supported by the enclosed declaration.

Failure to comply with the above will result in your case being dismissed immediately.

/s/ Charles Graham Webb
Charles Graham Webb
Deputy Clerk

---

* Defendants in Complaint 81 C 686, 81 C 1143 filed Jan., Feb., 1981

APPENDIX R

AO 82
(Rev. 8/80)

ORIGINAL
RECEIPT FOR PAYMENT
UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF ILLINOIS

39846

at Chicago

RECEIVED FROM Ann Jean McCutcheon

Anabel J. McCutcheon -vs- Chicago Board of Education

ACCOUNT	AMOUNT	
	70	00
TOTAL		

Case Number or Other Reference
76 C 4763
&
81 C 98

Account Code

100	**DEPOSIT FUND**
101	Trustee Fees
102	Restitution
200	**REGISTRY FUND**
201	Cash Bail
202	Land Condemnation
	GENERAL AND SPECIAL FUND
310	Immigration Fees
320	Attorney Admission Fee
330	Filing Fees
331	Civil Cases
332	Writ of Habeas Corpus
333	Appeals
334	Bankruptcy Cases (Clerk's Fee)
340	Sale of Publications
350	Copy Fees
360	Miscellaneous Fees
380	Recoveries of Costs
	FINES, PENALTIES AND FORFEITURES
410	Agricultural Laws
420	Economic and Stabilization Laws
430	Immigration and Labor Laws
440	Customs, Commerce and Anti-Trust Laws
450	Narcotics Prohibition and Alcohol Laws
460	Forfeitures of Unclaimed Money and Property
470	Mining Enforcement and Safety Administration
480	Internal Revenue Service (Criminal Fines)
490	Collateral Forfeitures (CVB)
500	Appearance Bond Forfeitures and Other Fines, Penalties or Forfeitures Not Otherwise Classified

2764763 391 8 70.00 CC
70.00 TL
70.00 CATD
111 4331 7/15/81 2A
.00 CALC

DATE / / 19	Cash	Check	M.O.

DEPUTY CLERK

APPENDIX S

Resolution 77-105

January 26, 1977

77-105

RESOLUTION

Burger v. *Board of Education of the City of Chicago, Saul Samuels, Blaine DeNye,* 75 L 10160

Winburg v. *B and C Electric, Inc., Board of Education of the City of Chicago and Saul Samuels* 71 CH 7338

It is hereby resolved that the Board of Education pay the reasonable legal fees incurred by Saul Samuels, former Director, Bureau of Architecture, and Blaine DeNye, a Board employee in defending the above causes of action in which the Board of Education is a co-defendant, and is represented by the Law Department. Statement for said reasonable legal fees will be submitted to the Law Department and is subject to Board of Education approval. The Attorney is directed to take steps to recoup said fees in the event a final judgment is rendered finding the individual defendants were not acting under the direction of the Board within the course or scope of their duties.

APPENDIX T

Pay Bill Jenner & Block 74-456

May 8, 1974

74-456

PAY BILL OF JENNER AND BLOCK FOR LEGAL SERVICES

RECOMMENDATION:

That the bill of Jenner and Block in the amount of $4,750 for professional services rendered from November, 1973 through March, 1974 be paid.

DESCRIPTION:

Judgment has been entered for defendants in the suit of Charles Eugene Rhodes, et al., v. City of Chicago in Trust for the Use of Schools, et al., 73 C 1425 which is an action in Federal District Court, for injunctive relief and damages against the Board of Education, Dr. James F. Redmond, Michael J. Murray, Frank S. Righeimer and Richard E. Girard involving the acquisition of property for an addition to the site at Van Vlissingen School. A notice of appeal has been filed to the Court of Appeals 7th Circuit by plaintiffs. Because the Board, its Attorney, Special Attorney and an Assistant Attorney in the Law Department are named as defendants it was necessary as we previously reported that outside counsel be retained to defend the case. The firm of Jenner and Block has submitted a statement for legal services which is on file in the Office of the Secretary.

SUPPORTIVE DATA:

The charges for professional services are proper and reasonable, are the usual and customary charges made by Jenner and Block for such services in federal

court actions; that the services rendered were required and satisfactorily performed.

FINANCIAL:

Charge to 14-1-101-41. Legal Expenses.....$4,750.

Respectfully submitted,

MICHAEL J. MURRAY
Attorney

Prepared by:
FRANK S. RIGHEIMER
Special Attorney

Within Appropriation:
ROBERT STICKLES
Controller

APPENDIX U

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

July 29, 1981

No. 79-2568

ANABEL J. McCUTCHEON,
Plaintiff-Appellant,
vs.
BOARD OF EDUCATION, CITY OF CHICAGO, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-C-3899
Judge George N. Leighton

NOTICE TO RESPOND

TO:

Anabel J. McCutcheon
Apartment 3B
1917 Tanglewood Drive
Glenview, Illinois 60025

A RESPONSE (AN ORIGINAL AND THREE COPIES, WITH PROOF OF SERVICE) IS REQUIRED ON OR BEFORE August 10, 1981

TO

"BILL OF COSTS-ATTORNEYS FEES: filed herein on July 8, 1981, by counsel for the defendants-appellees.

Copies to:

Thomas P. Brown, 221 N. LaSalle St., Chicago, Illinois 60601
Paul H. Heineke, Rm. 3110, 135 S.LaSalle St., Chicago, Illinois 60603
Michael J. Murray, Board of Education, 228 N. LaSalle St., Rm. 312, Chicago, Illinois 60601

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

July 28, 1981

Anabel J. McCutcheon
Apartment 3B
1917 Tanglewood Drive
Glenview, Illinois 60025

Re: Anabel J. McCutcheon v. Board of Education, City of Chicago, et al.
81-147

Dear Ms. McCutcheon:

Your petition for extraordinary writ or in the alternate for a writ of certiorari to the U.S. Court of Appeals for the Seventh Circuit has been docketed in this Court as a petition for a writ of certiorari. The petition for a writ of certiorari in the above entitled case was docketed in this Court on July 24, 1981 as No. 81-147.

Forms are enclosed for notifiying opposing counsel that the case was docketed.

Very truly yours,

ALEXANDER L. STEVAS, CLERK

By Loretta S. Ruffin

Loretta S. Ruffin
Assistant

Enclosures

APPENDIX V

Mr. H. Stuart Cunningham
Clerk, U.S. District Court
219 South Dearborn Street
Chicago, Illinois 60604

United States Court of Appeals

FOR THE SEVENTH CIRCUIT
219 So. Dearborn Street
Chicago, Illinois 60604

August 17, 1981

Taxed in favor of: BOARD OF EDUCATION, CITY OF CHICAGO, et al., Defendants-Appellees.

BILL OF COSTS

In Cause No. ____
U.S.C.A.-7 No. 79-2568
U.S.D.C. No. 78-C-3899

ANABEL J. McCUTCHEON,
Plaintiff-Appellant.
vs.
BOARD OF EDUCATION, CITY OF CHICAGO, et al.,
Defendants-Appellees.

	COST OF EACH ITEM		
1. For Docketing a case on appeal or review or docketing any other proceeding	$65.00		
2. For Making a typed copy of any record or paper, per page	2.00		
For Comparing with the original thereof any copy of any transcript of record, entry, record or paper, when such copy is furnished by the person requesting the certification, per page	2.00		
For Certification of any document or paper, whether the certification is made directly on the document, or by separate instrument	2.00		
For a photographic reproduction of any record or paper, per page	.50		
3. For every search of the records of the court and certifying the result of same	2.00		
4. Charge for copy of an opinion of the court	2.00		
5. Charge for printing of brief (Scheffer Press)		$770	77
6.			
Total		$770	77

Mandate issued July 29, 1981.

United States Court of Appeals 16

For the Seventh Circuit
Chicago, Illinois 60604

August 18, 1981

Before

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. _____

Hon. _____

ANABEL J. McCUTCHEON,
Plaintiff-Appellant,

No. 79-2568 vs.

BOARD OF EDUCATION, CITY OF CHICAGO, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 78-C-3899
George N. Leighton, Judge.

This matter comes before the court for its consideration upon the following documents:

1. The "MOTION FOR DOUBLE COSTS" filed herein on July 2, 1981 by defendants-appellees.

2. The "MOTION FOR ATTORNEYS FEES" filed herein on July 2, 1981 by counsel for the defendants-appellees.

3. The "BILL OF COSTS-ATTORNEYS FEES" filed herein on July 8, 1981 by counsel for the defendants-appellees.

4. The "PLAINTIFF'S RESPONSE TO SUA SPONTE ORDER RECEIVED UNTIMELY, AUG. 7th" filed herein on Auguust 11, 1981 by pro se plaintiff-appellant, Anabel J. McCutcheon.

On consideration thereof,

IT IS ORDERED that the motion for double costs and the motion for attorneys fees are hereby DENIED.

81-147

Office-Supreme Court, U.S.
FILED
JUL 24 1981
ALEXANDER L. STEVAS,
CLERK

U. S. PETITION FOR CERTIORARI

APPENDIX II

In the United States Court of Appeals

For the Seventh Circuit

No. 79-2568

ANABEL J. McCUTCHEON,

Plaintiff-Appellant,

vs.

THE BOARD OF EDUCATION, CITY OF CHICAGO Mrs. Carey B. Preston, Michael J. Murray, Earl B. Hoffenberg, Joseph P. Hannon, William Rohan, Gerard J. Heing, Mario Garofalo,

Defendants-Appellees.

Appeal from the United States District Court,
Northern District of Illinois, Eastern Division
Honorable Judges JOHN GRADY, GEORGE N. LEIGHTON,
Presiding

BRIEF AND ARGUMENT FOR APPELLANT

ANABEL J. McCUTCHEON, *Pro Se*
Apt. 3B: 1917 Tanglewood Drive
Glenview, Illinois 60025
(312) 328-1630
Attorneys for Plaintiff-Appellant.

Appellant Requests Oral Argument Before The Court

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IN THE

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

No. 79-2568

ANABEL J. McCUTCHEON,

Plaintiff-Appellant,

vs.

THE BOARD OF EDUCATION, CITY OF CHICAGO Mrs. Carey B. Preston, Michael J. Murray, Joseph P. Hannon, Earl B. Hoffenberg, William Rohan, Gerard J. Heing, Mario Garofalo,

Defendants-Appellees.

Appeal from the United States District Court,
Northern District of Illinois, Eastern Division
Honorable Judges JOHN GRADY, GEORGE N. LEIGHTON,
Presiding

BRIEF OF PLAINTIFF-APPELLANT

NATURE OF THE CASE

Respondent, Anabel J. McCutcheon, was suspended on Sept. 7, 1976 without specifications by Petitioner former General Superintendent Joseph P. Hannon; then charged on September 16, 1976 with ten counts of "CONDUCT UNBECOMING A PRINCIPAL." App. B p. 2a. After "a" year-long hearing of 15 daily and one evening session before an Administrative Committee of Defendant Board Members: CAREY B. PRESTON, MARGARET WILD,

HENRY McGEE, HERBERT JOHNSON: McCUTCHEON, was "DISMISSED FROM THE SERVICE" as principal and teacher, tenured for 30 years. No charges were ever brought against her as a teacher. MICHAEL J. MURRAY is the ATTORNEY FOR THE BOARD; EARL B. HOFFENBERG is the Assistant Attorney for the Board and the Attorney for JOSEPH P. HANNON, Petitioner. WILLIAM ROHAN, GERARD J. HEING are District Superintendents, complaining witnesses against McCutcheon. MARIO GAROFALO, janitor, is a complaining witness against McCutcheon.

Plaintiff was a tenured principal and teacher for the Chicago Board of Education for 30 years. Plaintiff was denied unemployment compensation, 1978 by her employer on the basis of a conviction, 1976; reversed, 1977; and a tape recording excerpt improperly submitted to the Illinois Appellate Court, 1979 [App. "D" p. 5a.] by Defendant MICHAEL J. MURRAY in conspiracy with Assistant State's Attorney, Edward Kay in Appeal 79-578.

JURISDICTIONAL STATEMENT

This is lawsuit brought under Title 42 U.S.C. §1983 and §1988 and the Fifth and Fourteenth Amendments to the Constitution concerning the suspension and the administrative hearing of the Chicago Board of Education, instituted against Plaintiff, Sept. 7, 1976 [76-866-1] resulting in Plaintiff's Deprivation of a means of a livelihood, liberty and property without due process, 1976 to date.

As no limitations are prescribed under 42 U.S.C. §1983 except those of the State Statutes, 122: §34-85, §34-22.7, and §34-49 as well as the Tenure Laws, reproduced in pamphlet form: "Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois."

Title 42 U.S.C. §1983:

§1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress (complaint for administrative review).

Title 42 U.S.C. §1988

§1988 Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

Title 18: §241:

§241. Conspiracy against rights of citizens.

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exer-

cise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

Title 18: §2236:

§2236. Searches without warrant.

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined for a first offense not more than $1,000; and for a subsequent offense, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

CONSTTTUTIONAL PROVISIONS

U.S. Const. Amend. I: Freedom of Religion, Speech, and the Press

"or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

United States Constitution, Amendment V: Guaranty of Trial By Jury; Private Property Respected:

"nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor be deprived of life, liberty, or property, without due process of law; nor shall private property to taken for public use without just compensation.

U.S. Const. Amend. VI: Rights of Accused Persons

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which districts shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. Amend. XIV: Definition of Citizenship

"nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

ILLINOIS STATUTES

Ill. Rev. Stat., 1975: 122: §34-85

§34-85. Removal for cause—Notice and hearing—Suspension

No teacher or principal appointed by the board of education shall (after serving the probationary period of 3 years specified in Section 34—84) be removed except or cause, and then only by a vote of a majority of all members of the board, upon written charges presented by the general superintendent of schools, to be heard by the board of a duly authorized committee thereof. Written notice of such charges shall be served upon the teacher or principal not less than 20 nor more than 30 days be-

fore the date of hearing. The hearing shall be held and the decision rendered within 80 days from the date of service of the notice; provided however, that continuances of said hearing granted at the request of the teacher or principal shall not be included in computing this 80 day period. The hearing shall be public at the request of either the teacher or the board. The teacher shall have the privilege of being present at the hearing, together with counsel, offering evidence and making defense to the charges. Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher shall be given reasonable warning in writing, stating specificially the causes which, if not removed, may result in charges. The action and decision of the board as to the existence of reasons or causes for dismissal or removal shall be final unless reviewed as provided in Section 34—85b of this Act. Pending the hearings of the charges, the person charged may be suspended in accordance with rules prescribed by the board but such person, if acquitted, shall not suffer any loss of salary by reason of the suspension. As amended by act approval Aug. 26, 1963. L. 1963. p. 3427.

Ill. Stat., 1975: 122: 34-22.7 Rehabilitation and Deferred Maintenance of School Buildings—Issuance of Bonds:

A separate ballot shall be used to vote upon such question on which shall be printed the amount, purpose and maximum rate of interest of the bond issue and shall be in substantially the following form:

Shall bonds in the amount of $120,000,000 be issued by the board of education of the City of ..... for the purpose of erecting, purchasing, or otherwise acquiring buildings suitable for school houses, erecting temporary school structures, erecting additions to, repairing, rehabilitating, modernizing and replacing existing school buildings and

YES .....

Upon the filing in the office of the county clerk of the county wherein such school district is located of a duly certified copy of any such ordinance, it shall be the duty of such county clerk to extend the tax therein provided for, including an amount to cover loss and cost of collecting said taxes and also deferred collections thereof and abatements in the amounts of such taxes as extended upon the collector's books. The ordinance shall be in force upon it passage. Added by act approved July 7, 1967. L. 1967. p. 1223, H.B. No. 1931.

§34-22.7: Rehabilitation and deferred maintenance of school buildings—Issuance of bonds.

For the sole purpose of rehabilitating and accomplishing the deferred maintenance of present school buildings the board, with the consent of the city council expressed by ordinance, may incur an indebtedness and issue bonds therefore without referendum in an amount or amounts not to exceed the aggregate Two Hundred Fifty Million Dollars ($250,000,000).

Ill. Stat., 1975: 122: §34-49: Contracts, expense and liabilities without appropriation:

No contract shall be made or expense or liability incurred by the Board, or any member or committee thereof, or by any person for or in its behalf, notwithstanding the expenditure may have been ordered by the board, unless an appropriation therefore has been previously made. Neither the board, nor any member of committee, officer, head of Department [DEFENDANT MICHAEL J. MURRAY] or employee thereof shall during a fiscal year expend or contract to be expended any money, or incur any liability, or enter into any contract which by its terms involves the expenditure of money for any of the purposes for which provision is made in the budget, in excess of the amounts appropriated in

the budget. Any contract, verbal or written, made in violation of this section is void as to the board, and no moneys belonging thereto shall be paid thereon.

Jurisdiction is invoked in the Appellate Court under Title 28 U.S.C. §2202 (1970)

> "Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

[Judgment Orders of the Honorable Judge Leighton are found in Appendix "E" and Appendix "F" pp. 6a-10a.]

ISSUES PRESENTED FOR REVIEW

1. Whether the Defendants deprived Plaintiff of a means of a livelihood and her constitutional rights of due process by disregarding the Tenure Laws. "Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois" [Pamphlet Reproduced by the Appellant].
2. Whether the Plaintiff was deprived of her constitutional rights under the First and Fourteenth Amendment of personal liberty and due process: to a private hearing under the Illinois Revised Statutes, 1975: Chap. 122: 34-85.
3. Whether the Plaintiff was deprived of her constitutional rights under the Fifth, Sixth, and Fourteenth Amendments by being prosecuted on criminal charges [#1, #3, #5] in an administration hearing.
4. Whether the Plaintiff was denied her constitutional rights under the First and Fourteenth Amendments of the United States Constitution to criticize the Board and Defendant JOSEPH P. HANNON on Nov. 10, 1975.
5. Whether the Court of Judge Leighton had jurisdiction to consolidate this cause with a Title VII four-

year old complaint on Nov. 3, 1978 and the authority to deny Plaintiff a public jury trial by reason of this consolidation [Transcript, Jan. 19, 1979]

6. Whether the Nov. 3, 1978 "order of reassignment from Grady to Leighton," docketed Nov. 14, 1978, was a valid order of Judge Grady.

7. Whether the Court erred in dismissing WILLIAM ROHAN, leaving his name out of the Judgment Order (3899) [App. "E" p. 6a.].

8. Whether the Court erred in dismissing all Defendants for alleged immunity as acting in a "quasi-judicial" capacity (Judgment Order-3955) [Appendix "F" p. 10a.].

9. Whether the Defendant Attorneys have the statutory authority to represent Employees HANNON, HEING, ROHAN, GAROFALO; and whether they have the authority to represent the Defunct Board of Education on appeal without a public contract [Ill. Rev. Stat., 1975, 122: #34-39].

STATEMENT OF THE FACTS

1. On September 7, 1976 Principal-plaintiff was suspended without any specification for "Conduct unbecoming a principal" by Defendant former General Superintendent, JOSEPH P. HANNON. [App. "A" p. 1a.].
2. On September 7, 1976 afternoon: Audubon Janitors GAROFALO, MORAN, MITCHELL, complaining witnesses of criminal suspension charges #1, 3, 5 (under the direction of District Superintendent WILLIAM ROHAN) searched and seized Plaintiff's personal property in her office without lawful authority. Office was moved across the Hall.
3. On September 10, 1976 EARL B. HOFFENBERG, WILLIAM ROHAN were in the Audubon School in the new "private" office discussing with Callie Mitchell the charges against McCutcheon.

4. On September 15, 1976 William Rohan and a member of the CHICAGO BOARD OF EDUCATION SECURITY SQUAD attempted to force entrance to Plaintiff's 94-year old Aunt Marie McCutcheon's home at 2653 Stewart Avenue, Evanston: an address that is listed only in her personnel file of ten years ago.
5. The Assistant Board Attorney, EARL B. HOFFENBERG, also revealed his presence on the premises at this time.
6. September 16, 1976 Plaintiff received by certified mail the ten charges against her for alleged "conduct unbecoming a Principal and failure to discharge her duties as a principal. The charges were filed with the Complaint. [App. B *p.2a.*]
7. September 27, 1976: $2,500.00 in Audubon School Funds to which Principal was a contributor and which Principal was ordered to account for by October 15, 1976 BY THE SCHOOL AUDITOR, NOT NAMED: was removed from the LAKEVIEW STATE BANK AND TRUST COMPANY by JOHN KULA, TEACHER-ASSISTANT PRINCIPAL on the order of William Rohan.
8. "A" hearing was held on the following dates and the complete transcript filed with the Clerk of the Circuit Court of Cook County:

1-62	October 6, 1976	Earl B. Hoffenberg-Petitioner
63-275	January 17, 1977	Earl B. Hoffenberg-Petitioner
276-436	January 28, 1977	Earl B. Hoffenberg-Petitioner
437-644	February 1, 1977	Earl B. Hoffenberg-Petitioner
645-853	February 8, 1977	Earl B. Hoffenberg-Petitioner
854-1044	February 11, 1977	Earl B. Hoffenberg-Petitioner
1045-1192	February 16, 1977	Earl B. Hoffenberg-Petitioner
1193-1305	September 12, 1977	Earl B. Hoffenberg-Petitioner
1305-1536	September 13, 1977	Earl B. Hoffenberg-Petitioner
1537-1622	September 15, 1977	Earl B. Hoffenberg-Petitioner
1623-1805	September 19, 1977	Earl B. Hoffenberg-Petitioner
1806-2010	September 20, 1977	Defense
2011-2238	September 21, 1977	Defense
2239-2468	September 23, 1977	Defense

2469-2844 September 26, 1977 Defense
4 p.m. - 7:30 p.m. Earl B. Hoffenberg Cross-Exam of McCutcheon: Assisted by Board Attorney Kracjir

9. On October 6, 1976 McCutcheon's Attorney, JOHN B. SCHWARTZ, moved for the "trial" committee to: 2) appoint an impartial hearing officer 1) to produce names, addresses of witnesses, documents 3) that hearing officer be a licensed attorney because the committee was unqualified 4) that the Board employ outside legal counsel to advise. The motion was denied on all counts by CHAIRPERSON, MRS. CAREY PRESTON, Vice-President of the CHICAGO BOARD OF EDUCATION.
10. September 29, 1978 The Complaint for Civil Rights [78 C 3899] was filed with the Clerk of the United States District Court and assigned to Judge John Grady.
11. That on October 16, 1978 by letter to H. Stuart Cunningham, Clerk of the Court, Attorney PAUL H. HEINEKE (never having filed as Attorney of Record) solicited the consolidation of this separate cause with his two year old Title VII case before Judge Leighton. This letter was never docketed by the Clerk of the Court in any of the four cases it concerned. The letter was inaccurate.
12. That on October 16, 1978 by letter to H. Stuart Cunningham, Attorney THOMAS P. BROWN (not the Attorney of Record in any cause) solicited the consolidation of two cases 78 C 3894, 78 C 3955. This letter was never docketed by the Clerk of the Court in any of the four cases it concerned. The letter was inaccurate in facts.
13. That on October 28, 1978 Audubon Principal, Leona Collins misdirected the U.S. Marshal for service of summons on Defendant MARIO GAROFALO at his office in the Audubon School. The summons was held in the office of the Attorney for the Board, Defendant MICHAEL J. MURRAY.

14. That before November 1, 1978 Attorney Heineke (never having filed as Attorney of Record in 78 C 3899) wrote an ex parte communication to Judge Grady. That his letter is not docketed and is missing from all four case files despite the order of Judge Grady for Defendants to produce it.
15. November 2, 1978 Attorney Heineke wrote a second ex parte letter to Judge Grady. This letter is inaccurate in its statement of facts and is not docketed.
16. November 3, 1978 without a motion to consolidate or any notice to Plaintiff and with further ex parte communication to Judge Leighton Attorneys Brown, Heineke and EARL B. HOFFENBERG, DEFENDANT (not the Attorney of Record on any case) were granted a consolidation. Plaintiff was refused the right to speak against this consolidation.
17. November 3, 1978 Judge Leighton issued a pre-trial order in these consolidated cases; denied Plaintiff any discovery; denied Plaintiff the Court File kept in his chambers by not ruling on her motion for them upon his dismissal of her attorneys before trial.
18. That on November 7, 1978 Attorney THOMAS P. BROWN filed an appearance form under U.S. Supreme Court Rule #39 for Defendants Board, William Rohan, Earl B. Hoffenberg.
19. That on November 17, 1978 Attorney PAUL H. HEINEKE spoke for Defendants failing to separate JANITOR MARIO GAROFALO and without filing as Attorney of Record for any Defendants 78 C 3899. [3899 Transcript Filed 4763].
20. That on December 15, 1978 the Court refused to hear Plaintiff's Motion or compel attendance of subpoenaed witness MICHAEL J. MURRAY. [3899 Transcript Filed 4763].
21. That on January 19, 1979 the Court refused Plaintiff a jury trial for reason of its consolidation with the Title VII cause. [3899 Transcript Filed 4763].

22. That July 6, 1979-November 30, 1979 this single cause was called to trial consolidated with 76 C 4763 Title VII. [3899 Transcript Filed 4763].
23. That on September 14, 1979 Plaintiff was denied a Change of Venue; denied the right to present her motion; Defendant Attorney Heineke was permitted to argue the motion BEFORE IT WAS PRESENTED; permitted to bring a frivolous motion for a vacation for one of the Defendants. [3899 Transcript Filed 4763].
24. That on November 27, 1979 Judge Leighton dismissed all defendants - docketed 12-4-79. "E"
25. That on November 30, 1979 Judge Leighton vacated the orders consolidating this cause. That said order was docketed 12-4-79. "F"
26. That on December 7, 1979 Judge Leighton denied Plaintiff's Motion for a rehearing to file an amended complaint instanter. Docketed 12-11-79.

76 C 4763 Pre-Trial Motions (Consolidated) 78 C 3894, 78 C 3899, 78 C 3955

Date	Transcript Filed	Subject Matter
6/24/77	12/8/77	Pl.'s TRO for Teaching/Principal's Job
11/1/78	1/05/79	Judge Grady, 78 C 3899
11/2/78		Judge Marshall 78 C 3894, 3955
11/3/78	1/20/79	Judge Leighton Consolidation Title VII without a Motion under F.R.C.P. #42
11/17/78	1/10/79	Pl.'s for an Appeal of CONSOLIDATION (3899)
12/15/78	1/10/79	Pl.'s vs. Defendant Attorney Heineke's Violation of U.S. Supreme Court Rule #39 Speaking for Defendants without Authority Failure to separate GAROFALO (3899)
1/19/79	2/22/79	Pl.'s Motion for Jury Trial (3899)

4/20/79	4/20/79	Pl.'s 25-page List of Exhibits (4763) [Reproduced in Pamphlet Form]
5/11/79	5/11/79	Pl.'s Motion for Trial (4763)
7/6/79	9/10/79	24-hour Pre-trial call based on Pl.'s List of Exhibits and Motion for Trial
7/13/79	9/17/79	Pre-Trial Call: Defts.' Motion for Jury Trial, Count I and split of Complaint
7/20/79	9/17/79	Draft Order for Plaintiff to Answer to Above Motion
8/27/79	9/10/79	Trial Call: Exhibits Ordered to Remain with Minute Clerk, Mr. Grice. Erroneous Statement of Judge Leighton Charging Plaintiff's Responsibility Defendants' Attorneys: Querrey Law Firm
9/14/79	11/4/79	Pl.'s Motion for Change of Venue: She NOT PERMITTED TO SPEAK TO MOTION Deft.'s Motion for Vacation for Defendant THOMAS FINNEGAN: Deft. Heineke spoke on both motions.
3/22/80		Pl.'s Motion to file the above transcripts in separate appeal of 3899. Denied on *Sua Sponte order* and Defts. allegation that the Clerk of the U.S. District Court, legally trained, knows what he's doing better than the *Pro Se* Plaintiff "lay person." *Pro Se* Plaintiff was permitted no rebuttal of this argument: As a result NO TRANSCRIPTS ARE FILED IN THIS APPEAL —separated November 30, 1979, two weeks before trial by Judge Leighton.

ARGUMENT

I. THE DEFENDANTS DEPRIVED PLAINTIFF OF A MEANS OF A LIFELIHOOD AND HER CONSTITUTIONAL RIGHTS OF DUE PROCESS BY DISREGARDING THE TENURE LAWS.

"The Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois" [Pamphlet Reproduced by Appellant]. mandates an independent hearing officer (who is charged with the review of the charge "irremediable") and other protections for the tenured Plaintiff of 30 years. The Board Trial Committee: Defendants PRESTON, WILD, McGEE, and JOHNSON denied Plaintiff her due process rights Oct. 6, 1976 by denying Plaintiff's pre-trial motion [App. "G" *p. 12a.*].

State governments are subject to constitutional restrictions when dismissing employees. *Torcaro* v. *Watkins*, supra. Public employees may not be discharged without due process, *Taylor* v. *New York City Transit Authority*, supra. The administrative trial committee was not properly constituted and a meaningful opportunity to be heard was not provided Plaintiff, *Goss* v. *Lopez*, supra. Plaintiff was denied an independent hearing officer: The Board decided "irremediability" BEFORE TRIAL HEARING and no cause or evidence was ever presented verifying "irremediability" because of the pre-judgment. The prejudiced hearing committee provided Plaintiff violated her rights of due process, *Hartrop* v. *Board of Junior College, District 515.*

The Defendants chose to ignore Plaintiff's "liberty" and "property" rights under the Illinois Tenure Laws, the First and Fourteenth Amendments to the U.S. Constitution: "unnamed but constitutionally protected liberties under the due process provisions of the federal Constitution," *Finot* v. *Pasadena City Board of Educa-*

tion. A tenured teacher must have the MAXIMUM PROTECTION of the TENURE LAWS, *Reinhardt* v. *Board of Education, Danahoo* v. *Board of Education, Szirpan* v. *Board of Education,* and *Jones* v. *Hannon,* wherein Beulah Jones is a woman principal for the same Board of Education, City of Chicago and the same Defendants, who referred to the "other case before Judge Dunn", knowingly and maliciously violating the Tenure Laws. That the Board Members, DEFENDANTS were individually named in this suit BEFORE THE DISMISSAL OF McCUTCHEON and lost at every appeal level: knowingly and maliciously deprived Plaintiff of her means of a livelihood as a principal for three full years: under the same conditions and similar charges.

Wrongful dismissal suits that are based on deprivation of constitutional rights cited above, may be instituted in federal district court under 42 U.S.C. §1983, *McLaughlin* v. *Tilendis,* supra. The district court erred in denying Plaintiff a trial or any hearing.

II. THE PLAINTIFF WAS DEPRIVED OF HER CONSTITUTIONAL RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS OF PERSONAL LIBERTY AND DUE PROCESS TO A PRIVATE HEARING UNDER THE ILL. REV. STAT., 1975: 122: §34-85:

By the delivery of the suspension notice, Sept. 7, 1976 [App. "A", *p.1a.*] in the presence of a male teacher subordinate staff member by the malicious overt action of Defendant WILLIAM ROHAN, who ordered Bill Bartuce (teacher) to remain; and by the publications of the specifications, Sept. 15, 1976 by the malicious overt actions of Defendants HANNON and HOFFENBERG before Plaintiff's Receipt of them, Sept. 16, 1976.

The Plaintiff had administrative rights to privacy of a suspension hearing before a public hearing, *Longarzo* v. *Anker,* supra and under the Ill. Rev. Stat. 122: §34-85: That knowingly and maliciously experienced Defendant WILLIAM ROHAN (35 years) refused to remove male

teacher, Bill Bartuce from the conference in which ROHAN delivered the suspension notice, on which there was a place for Bartuce's signature as witness. ROHAN delivered this notice "for conduct unbecoming a principal" in the presence of Bartuce, teacher-subordinate, that he deliberately brought along to witness the female "put-down": THAT WILLIAM BARTUCE IS NAMED AS A MALE TEACHER, UNCERTIFICATED IN ADMINISTRATIVE POSITION (politically-appointed) RECEIVING MORE PAY IN ADMINISTRATION POSITION, District Three than CERTIFIED PRINCIPAL-ADMINISTRATOR McCUTCHEON. Bartuce is named in EEOC Charges TCH5-0061, 1974-1976 and in the Title VII suit, 76 C 4763.

That knowingly and maliciously DEFENDANTS PUBLISHED CHARGES of "scanty and indecent attire" denying Plaintiff her personal "liberty" guaranteed by the First Amendment to the Constitution to change her clothes in the privacy of a wardrobe closet and to have these unproven allegations discussed in the privacy of a hearing guaranteed by the Ill. Stat., §34-85 and requested of Plaintiff WILLIAM ROHAN, Sept. 7, 1976—nine days before the charges were specified, maliciously fabricated by him to deprive her of her professional reputation.

That the First Amendment includes "liberty" which is guaranteed against deprivation by the State Agency in the Due Process Clause of the Fourteenth Amendment, *Hamilton* v. *Regents,* supra and that a Teachers' Professional Reputation may not be taken from him without due process of Law, *Lucia* v. *Duggan*: If a male teacher is permitted to wear a beard (as a personal "liberty") than the female Plaintiff must not be denied the right to change her clothes in a wardrobe closet without any scandal being fabricated and published as fact BEORE ANY HEARING MANDATED BY LAW. Plaintiff was denied the statutory right of a private hearing within ten days of the charges (per Tenure Laws). These rights were maliciously deprived by Plaintiff's "female put-down" before a SUBORDINATE MALE TEACHER by

a politically appointed District Superintendent WITH THE SAME PRINCIPAL'S CERTIFICATE AS PLAINTIFF.

Judge Leighton erred in dismissing Defendants who were charged specifically with the above deprivations of Plaintiff's rights and the FABRICATION OF CHARGE #3 by moving wardrobe closet across the hall to the "principal's office" with windows on the playground to bring this charge of indecency in public and in the alleged presence of children, who didn't exist in the specification, on a vague date with invisible witnesses WHO NEVER MADE AN APPEARANCE.

In the administrative hearing, Plaintiff was made a subject of ridicule by the janitors, who lied and the hearing committee permitted such behavior from their Board from favored witnesses. Plaintiff's Attorney to CHAIRPERSON AND VICE-PRESIDENT, Defendant PRESTON:

"But my client isn't laughing, Mrs. Preston."

III. THE PLAINTIFF WAS DEPRIVED OF HER CONSTITUTIONAL RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS BY BEING PROSECUTED ON CRIMINAL CHARGES [#1, #3, #7] IN AN ADMINISTRATION HEARING:

of lay persons without the protection of a jury trial, a specific date instead of the "Spring of 1975" [#3], face-to-face confrontation with witness DAVE SABLE, HAROLD JOHNSON, and PATRICK DOW [#5], specifically named as witnesses, Oct. 1, 1976 by Attorney Defendant MICHAEL J. MURRAY.

A Judgment of Acquital Bars further prosecution of Defendant on any aspect of a criminal charge. Plaintiff was acquited of Charge five before suspension, but it was brought again, specified exactly by the Defendant MICHAEL J. MURRAY [Oct. 1, 1976 letter]: "She was present at the trial and knows who the witnesses are."

She was denied the witness, Patrick Dow, a nine-year old boy, who lied for Thomas Moran at the McCutcheon trial, August 16, 17, 1976.

In three cases cited (*Burke, Burke* v. *U.S.* and *Christ* v. *Butz*) the United States Supreme Court ruled that the Fifth Amendment's Double Jeopardy Clause precludes retrial after the Reviewing Court has found the evidence legally insufficient to support guilty verdict. This ruling must apply to both McCutcheon's criminal acquitals [*Illinois* v. *McCutcheon,* El. 76404; 76-1338.]

An administrative body and complaining witnesses that willfully set themselves above the law should not only be abolished, but individuals should be fined under §42 U.S.C. §1983; 13 U.S.C. §241.

The Administrative Hearing Committee maliciously accepted the misinterpreted decisional authorities of Defendants' Attorney EARL B. HOFFENBERG. A case that was quoted many times was *Rizzo* v. *Board of Fire Commissioners*: whose hearing on misconduct was held before his criminal trial and therefore, the Administrative Agency had jurisdiction. However, McCutcheon was tried in criminal courts on charges #1, 5 before the same exact charges were brought WITH NO ADDITIONAL EVIDENCE before the administrative body in the malicious prosecution by six BOARD ATTORNEYS and ATTORNEY DEFENDANT MURRAY, who assisted Hannon's Attorneys in the Administration Hearing.

Fender v. *School District #25* refers to a teacher who was fired because he did physical damage to children and was referred to several times at the administrative hearing by HANNON'S ATTORNEY, EARL B. HOFFENBERG to character assassinate, slander the Plaintiff, and by inuendo that McCutcheon did damage to children by advising THEIR PARENTS TO SPANK THEM.

These two decisional authorities were invalid and irrelevant to the specific charges brought against the Plaintiff and should have been rejected by the committee of

legally unqualified lay persons under the influence of HANNON'S ATTORNEY.

IV. PLAINTIFF WAS DENIED HER CONSTITUTIONAL RIGHTS UNDER THE FIRST AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION TO CRITICIZE THE BOARD AND DEFENDANT JOSEPH P. HANNON ON NOV. 10, 1975 AT A PUBLIC MEETING OF THE BOARD: FOR THE ILLEGAL TRANSFER AND USE OF FUNDS IN VIOLATION OF ILL. REV. STAT. 1975: §34-22.2 and §34-49.

All the testimony of Audubon teachers, principal in the Board Administrative Hearing concerning the improper rehab, misuse of funds brought as a defense against JOSEPH P. HANNON's charges maliciously and wrongfully brought: was struck by Chairperson PRESTON, who also suppressed other evidence of staff (MURRAY, HOFFENBERG, ROHAN, GAROFALO) misconduct in suspending, punishing, and improperly MCCUTCHEON for exercising her First Amendment Rights.

Exercise of a constitutionally protected right cannot be the basis of termintaion of a job. *Mt. Healty City Bd. of Ed.* Particularly, a principal, the only STATUTORY ADMINISTRATOR OF THE SCHOOL, may criticize the allocation of those school funds, improperly and illegally. *Hamilton* v. *Regents of the University of California.*

In addition, Defendants ROHAN and HOFFENBERG punished Plaintiff's witness [Laura Weiner Goulding and Nancy Gottlieb Pearson] against TOM MORAN, Jr. by transferring them to the Blaine School under the guise of "integration" June 17, 1977. The Blaine School was not BLACK, but Spanish. One was returned: the other, Nancy Pearson, personally involved with William Rohan's "featherbedding firemen' son was transferred to a black school and steps have now been taken to dismiss her BECAUSE SHE FILED A GRIEVANCE WITH THE UNION and was named as a witness in the federal suites

of Plaintiff. She was transferred and "integrated" as a teacher under 55 years of age: discrimination on account of age that was declared null and void by Judge Bua. On the day Plaintiff McCutcheon was suspended: Defendant GAROFALO hung a dead bird by the neck from the blackboard of her classroom and 3rd grade children were subjected to his sick mind on the First day of school, Sept. 7, 1976.

V. THE COURT OF JUDGE LEIGHTON HAD NO JURISDICTION TO CONSOLIDATE THIS CAUSE WITH A TITLE VII FOUR YEAR OLD COMPLAINT ON NOV. 3, 1978 AND NO AUTHORITY TO DENY PLAINTIFF A PUBLIC JURY TRIAL BY REASON OF THIS CONSOLIDATION [Transcript January 19, 1979]:

Because this individual cause (3899) was not transferred to him by Execution Decision Chief Justice Parsons) until Nov. 9, 1978 from Judge Grady.

Without a motion or notice to *Pro Se* Plaintiff under U.S. Supreme Court Rule #42: the transcript record of Nov. 3, 1978 indicates that this consolidation was achieved by more ex parte communications by the Defendants, who prejudiced the Court with allegations of "misconduct," "insubordination," and "incompetence" of *Pro Se* Plaintiff: NO EVIDENCE EVER HAVING BEEN PRESENTED IN ANY OF THESE CASES BY FOUR DEFENDANT ATTORNEYS who were permitted to speak in Court, place their names on the transcripts WITHOUT FILING AS ATTORNEYS OF RECORD UNTIL THE FACT OF *Pro Se* Plaintiff's protests, eg. THOMAS BROWN, filed as Attorney of Record, Nov. 7, 1978 AFTER HE SPOKE FOR THE CONSOLIDATION; filed as ATTORNEY OF RECORD, Aug. 27, 1979 in 76 C 4763 AFTER HE HAD SPOKEN FOR A FULL YEAR IN EVERY ACTION, 4763.

On January 19, 1979 Plaintiff was denied a jury trial in this action by Judge Leighton by reason of this wrongful consolidation. Attorney Brown alleged that she had

filed an "interlockatory" appeal against the JUDGMENT OF JUDGE PARSONS—a deliberate lie to misinform Judge Leighton, who demanded no proof of such allegations from Defendants at any time because he was previously prejudiced by ex parte communications.

VI. THE NOV. 3, 1978 "ORDER OF REASSIGNMENT FROM GRADY TO LEIGHTON" WAS NOT A VALID ORDER OF JUDGE GRADY:

But evidence created after the fact by ex parte communications between the Defendants and the Deputy Clerks of the Court with full knowledge of H. Stuart Cunningham and misinformation to Judge Grady, Judge Leighton.

In the transcript record of Nov. 1, 1978 of this case there is no "order of reassignment from Grady to Leighton": neither was there any record or "recommendation" of "reassignment until after the fact of the wrongful consolidation by Judge Leighton." Neither would Judge Grady or Judge Leighton make such an order outside of the Executive Committee or in total disregard of Chief Justice Parsons. Nor would either Judge Grady or Judge Leighton discourteously refer to the other as "Grady" or "Leighton" or slip away from the habits of years of experience on the bench.

This order was FALSIFIED BY DEFENDANTS and/or the Clerk of the Court, who refused to correct it on Plaintiff's [Certified Mail Request]: It was done as a schoolboy trick on the *Pro Se* Plaintiff-Teacher by the Defendants, who also made the mistake of sending the original in red ink to the Plaintiff, which she wishes to place as evidence before the Appellate Court.

VII. THE COURT ERRED IN DISMISSING WILLIAM ROHAN, LEAVING HIS NAME OUT OF THE JUDGMENT ORDER (3899) [App. "E". p. 6a]:

And failing to decide on Plaintiff's Motion for Summary Judgment of Default Against Defendant Rohan.

William Rohan received the notice of summons on Oct. 5, 1978; his attorney THOMAS P. BROWN did not file an appearance until Nov. 7, 1978. The Court erred in dismissing them.

VIII. THE COURT ERRED IN DISMISSING ALL DEFENDANTS FOR ALLEGED IMMUNITY AS ACTING IN A "QUASI-JUDICIAL" CAPACITY (Judgment Order—3955) [Appendix "F," p. 10a.]:

BECAUSE DEFENDANT JOSEPH P. HANNON WAS THE PETITIONER: DEFENDANT EARL B. HOFFENBERG WAS THE PETITIONER'S ATTORNEY: AND DEFENDANT MRS. CAREY B. PRESTON DID NOT ACT IN HER JUDICIAL CAPACITY, BUT AS THE VICE-PRESIDENT OF THE CHICAGO BOARD OF EDUCATION.

Chairperson Mrs. Carey B. Preston refused to unlock the doors of a public hearing in which she was not only the Chairperson, but the Vice-President of the Board, to whom the Attorneys and Security Guard were insubordinate in locking said doors TO SUPPRESS THE EVIDENCE AGAINST THE BOARD by Plaintiff in her wrongful suspension. When Defendant Preston refused to unlock the doors of an alleged public hearing in which Plaintiff brought charges against the General Superintendent, *Et. Al.* she was acting as Vice-President of the Board AND NOT AS A "FAIR AND UNBIASED" judge: She was also denying Plaintiff her statutory right to a public hearing and her constitutional rights to liberty and due process.

Public School Officials are not protected against suits under 42 U.S.C. §1983 by the Ill. Tort Immunity Act, Chap. 85: §2-201 *et seq.* Only a qualified immunity is retained, dependent on good faith *McLaughlin* v. *Tilendis* which no one of these Defendants demonstrated in their overt acts against Plaintiff—in the intimidation of her family, confiscation of her property, and the harassment of her witnesses, who were also locked up while the janitors and members of their Union wandered the build-

ing during their work hours. It is a violation of due process, when one who makes a recommendation to dismiss is also considered "a quasi-judge" (HANNON) along with his attorney (HOFFENBERG) and the complaining witnesses, reps. *Funetes* v. *Sherin,* In the Judgment Order [App. "F" p.10a.] the Court erred in dismissing Defendants PRESTON, HANNON, HOFFENBERG. That Defendants HANNON, HOFFENBERG were bringing charges for dismissal, assisted by MICHAEL L. MURRAY and Complaining Witnesses HEING, ROHAN, and GAROFALO and in no way can be considered in a "quasi-judicial" capacity. By these errors the Court of Judge Leighton prejudicially condoned a "Kangaroo Court" exactly as the *Pro Se* Plaintiff had named it in her original complaint and in her appeal: and had been reprimanded by Judge Leighton for such "language" in deprivation of her First Amendment Rights.

That the Court erred in this same Judgment Order by misinterpreting Appellate and U.S. Supreme Court decisions: *Butz* v. *Economou* and *Hampton* v. *Hanrahan,* which denied immunity to federal and state officials: "There is no basis for according to federal officials a higher degree of immunity from liability when sued for a constitutional infringement than is accorded to State Officials under 42 U.S.C. §1983." *Butz* v. *Economu, supra.*

That agency officials, who perform functions analogous to those of a prosecutor are afforded immunity, *Butz* v. *Economou*: However, Defendants PRESTON AND HOFFENBERG held a conflict of interests in this "Kangaroo Court" in that PRESTON acted as the Vice-President of the Board and not as an impartial "Judge" and Hoffenberg failed to relinquish his position as BOARD ATTORNEY in order to represent the Petitioner JOSEPH P. HANNON.

That Defendant PRESTON also acted as Vice-President of the Board and not as an impartial Judge in suppressing the evidence of the illegal transfer and misuse of funds for a $30,000 janitors' office on Nov. 10, 1975 and

deprived Plaintiff of her constitutional rights to criticize the Board for allocation of funds at the Audubon School.

IX. THE DEFENDANT ATTORNEYS HAVE NO STATUTORY AUTHORITY TO REPRESENT EMPLOYEES HANNON, HEING, ROHAN, GAROFALO: AND HAVE NO STATUTORY AUTHORITY TO REPRESENT THE DEFUNCT BOARD OF EDUCATION ON APPEAL WITHOUT A PUBLIC CONTRACT [Ill. Rev. Stat., 1975, 122: §34-49]

On Nov. 1, 1978, Defendant Attorney HEINEKE was ordered by Judge Grady to show cause why he was representing the Board without a public contract made in open meeting. This order he did not comply with, but went ex parte to Judge Leighton to get an improper consolidation by legal trickery to avoid complying with Judge Grady's order.

That under the Ill. Rev. Stat., 1975: Chap. 122: §34-49 the Law Firm of Heineke and Shrader is representing Defendants improperly and are the recipients of illegally transferred funds, that Defendant Attorney Heineke is also in violation of the United States Supreme Court Rule #39 as he solicited this case from H. Stuart Cunningham, the Clerk of the Court on Oct. 16, 1978 was the subject of Plaintiff's Complaint to the Attorney Registration and Discipline Commission of the Illinois Supreme Court and one of the pleading in an alleged "Interlockatory Appeal" to the U.S.C.A. #

That Attorney Defendant MICHAEL J. MURRAY has no authority to retain Attorney THOMAS P. BROWN, *et. al.* either as an employee of the Board or as the Chief Attorney for the Board without bringing the whole suite before the Board—HIS MISCONDUCT HE HAS SUPPRESSED FOR OVER EIGHT YEARS [73 Ch 1355].

That all Defendants and their attorneys are the recipients of illegally transferred funds of the $550 million that they allege they do not know where it went. THIS IS WHERE IT'S AT!

CONCLUSIONS

Judge Leighton inaccurately and prejudicially ruled: "The Plaintiff does not . . . nor can she allege facts, which would prove a constitutional deprivation or a charge of class based discrimination" because Plaintiff presented documented evidence with the complaint and every motion —not one ever being heard by the Court. She filed no charges of CLASS BASED DISCRIMINATION in the wrongful dismissal firing of a TENURED PRINCIPAL. *Pro Se* Plaintiff invoked jurisdiction under Title 42 U.S.C. §1983, 1988. As no limitations are prescribed under 42 U.S.C. §1983 the District Court is bound to observe the same limitations as a State Court would in regards to Ill. Rev. Stat., 122: §34-85, §34-22.7, and §34-49 as well as the TENURE LAWS, reproduced in pamphlet form: "Rules and Regulations Governing the Procedure for the Dismissal of Tenured Teachers in the State of Illinois."

Judge Leighton failed to consider Motions #7, #8, #9 or the two Nov. 1 orders of Judge Grady, which Defendants deliberately failed to answer. Judge Leighton failed to consider the Retaliation, Harassment following Plaintiff's exercise of her rights to file suit 73 Ch 1355, EEOC, FEPC, HEW Charges and the right to oppose a discriminatory Administrative Compensation Plan, 71-270 that Defendants implemented only to dismiss Plaintiff: having refused her any "merit" 1974 rating, which established her pay and having refused her an earned merit raise, Dec., 1973 BECAUSE SHE EXERCISED HER RIGHTS TO BRING SUIT FOR THIS REDUCTION IN SALARY, DEPRIVATION OF LIBERTY AND PROPERTY.

The Court of Judge Leighton denied Plaintiff these protected rights guaranteed by the U.S. CONSTITUTION, Amendments #1-14 and complaints brought under U.S.C. 1983. Judge Leighton's Judgment Orders seemed to brush off the question of the PLAINTIFF'S RIGHT TO A

JURY TRIAL without really deciding the propriety of the hearings given by the Board totally disregarding her tenure rights of due process (XIV) liberty (I) and property (V).

The Court erroneously denied Plaintiff any hearing on any motion, while permitting unqualified attorneys to argue her motions BEFORE THEY WERE PRESENTED. Eg. Sept. 14, 1979: "Petition for a Change of Venue or in the alternate a Motion to Disqualify Judge GEORGE N. LEIGHTON on the Grounds of Prejudice." The Court permitted the Defendant Attorney Heineke to argue that the Judge had always been fair to them: Judge Leighton should have disqualified himself AFTER THE DEFENDANTS EX PARTE COMMUNICATIONS, October-November, 1978 *et seq.*, that not only went on outside the Courtroom, but were indulged in the Courtroom by discussing Plaintiff's Motions with the Defendant Attorneys and denying her the right to present them before the Court—or to speak at all-reprimanding Plaintiff for "interruptions" when she objected to this improper procedure and legal trickery indulged by the Court for attorneys only.

The Court denied Plaintiff equal representation by dismissing her attorneys before trial; by denying her new attorneys any "Discovery" and by denying her requests for the public file from his chambers, Nov. 3, 1978.

For the above reasons, the decision should be reversed in its entirety and all Defendants held for costs punitive and emotional damages for the misinformation vexacious, and delay of consultation.

For all the foregoing reasons, Appellant respectfully requests that this Honorable Court reverse the judgment on all Counts without remand;

Or in the Alternative, to vacate the judgment and remand the same to trial court for a new trial, in which case, Appellant requests:

a) an injunction against the Defendants, enjoining them from denying her a teachers/administrators' job and salary at the Third Lane, top step rate of $32,655 for 52 weeks (teachers pay) in the interim of adjudication; and back pay at the rate of Third Lane top step, 1976-1979.

b) a Writ of Mandamus for Defendants to pay all Court costs, legal fees, interest lost on loan and pension as a result of the mistrial occasioned by their vexacious, malicious delay of four years 1976-1980 and wrongful consolidation of two years, 1978-1980.

Appellant feels that the above two conditions are necessary for the new Board to show good faith or before settlement can be effected.

Respectfully submitted,

.....

Anabel J. McCutcheon

Appendix "A"

Board of Education
City of Chicago
228 North LaSalle Street
Chicago, Illinois 60601

September 7, 1976

Miss Anabel J. McCutcheon
1917 Tanglewood Drive
Glenview, Illinois 60025

Dear Miss McCutcheon:

Pursuant to Section 34-85 of The School Code and Section 4-30 of the Rules of the Board of Education of the City of Chicago, you are hereby notified that you are suspended from your duties as the principal of Audubon Elementary School effective immediately pending trial before a Trial Committee of the Board of Education of the City of Chicago as provided by statute on the charges of conduct unbecoming a principal in the Chicago Public Schools and failure to discharge your duties and responsibilities as a principal in said school.

Yours very truly,
Dr. Joseph P. Hannon
General Superintendent of Schools

JPH:MJM:pm
Miss Anabel J. McCutcheon
1917 Tanglewood Drive
Glenview, Illinois 60025

Received copy of the foregoing notice of suspension this ..... day of September, 1976.

.....
Anabel McCutcheon

Appendix "B"

To the Board of Education
of the City of Chicago
The General Superintendent of Schools

September 16, 1976

hereby makes the following charges against ANABEL J. McCUTCHEON, a principal in the Chicago Public Schools.

CHARGES

I charge ANABEL J. McCUTCHEON with conduct unbecoming a principal in the Chicago Public Schools and failure to discharge duties and responsibilities as principal of Audubon Elementary School.

SPECIFICATIONS

1. On September 12, 1975 Miss Anabel J. McCutcheon threatened to cause bodily harm with a baseball bat to Mario Garofalo, engineer-custodian, of the Audubon School.
2. Miss Anabel J. McCutcheon failed to present acceptable performance appraisal objectives for the 1975-76 school year despite suggestions, conferences, recommendations, and directives of her superiors to do so.
3. In the Spring of 1975 and on June 19, 1975, Miss Anabel J. McCutcheon was observed by employees of the Board of Education scantily and indecently attired in the Audubon Elementary School.
4. On November 10, 1975, Anabel McCutcheon failed to follow payroll procedures in that she claimed a day of illness leave (A) when in the afternoon she attended and spoke at the public portion of a meeting of the Board of Education.
5. On January 9, 1976, Miss Anabel J. McCutcheon kicked Tom Moran, Jr, the school janitor, in the buttocks.
6. Miss Anabel J. McCutcheon failed to follow a directive from the District Superintendent issued on

February 2, 1976 ordering her to stop making recommendations on suspension forms of steps to be taken by parents such as spanking. She indicated such insubordination in a letter to Dr. Heing, District Superintendent, on February 4, 1976 and on February 11, 1976, she continued in her defiant and insubordinate manner.

7. Miss Anabel J. McCutcheon suspended two pupils for 19 days on February 11, 1976. The District Superintendent shortened the suspension to nine days in a letter to parents and principal dated February 18, 1976. Miss Anabel J. McCutcheon disregarded the direct order of her superior and ordered that the suspension for 19 days stand thereby being insubordinate and violating Board Rule 6-9 (Rev. 5/28/75).
8. Miss Anabel J. McCutcheon refused to send necessary personnel identification data to the office of District 3 and the Department of Teacher Personnel despite letters requesting the information from two District Superintendents and the Assistant Superintendent in charge of Personnel
9. Miss Anabel J. McCutcheon refused to meet or cooperate with the Department of Field Auditors for the purpose of reviewing the audit report and recommendations of the Auditor completed on May 17 and 18, 1976 regarding improper bookkeeping procedures at Audubon Elementary School.
10. Miss Anabel J. McCutcheon has repeatedly failed to follow the recommendations, suggestions, and directives of her superiors for the improvement of her performance as a principal, has continued to be insubordinate, and has otherwise failed to correct her deficiencies and has exhibited such deleterious conduct towards personnel of the Chicago Board of Education that her conduct was, therefore, deemed to be irremediable.

Appendix "C"

Board of Education
City of Chicago
228 North LaSalle Street
Chicago, Illinois 60601

October 3, 1977

Miss Anabel J. McCutcheon
1917 Tanglewood Drive
Apartment 3B
Glenview, Illinois 60025

Dear Miss McCutcheon:

Enclosed is a certified copy of Board Report 77-271-3 adopted October 3, 1977 wherein the Board of Education approved and adopted the report of the Trial Committee recommending your dismissal from the service of the Board of Education of the City of Chicago.

Very truly yours,
Michael J. Murray
Attorney

MJM:EBH:dw
Enclosure

Certified Mail
Return Receipt Requested

Appendix "D"

No. 79-578
in the
Appellate Court of Illinois
First District

ANABEL J. McCUTCHEON,

Plaintiff-Appellant,

vs.

STATE OF ILLINOIS, Division of Unemployment Insurance, etc. et al., Chicago Board of Education,

Defendants-Appellees.

Appeal from the Circuit Court of Cook County.
No. 78 L 23980
Honorable RICHARD L. CURRY, Judge Presiding.

ORDER

THIS CAUSE COMING ON TO BE HEARD on the motion of the Defendants-Appellees to amend the record on appeal and the Court being fully advised in these premises:

IT IS HEREBY ORDERED THAT:

(1) The record on appeal be amended to include 1) the copy of a notice of a claims adjudicator's decision dated April 12, 1977), 2) a copy of a letter dated April 22, 1978 from the plaintiff appealing the claims adjudicator's decision of April 12, 1977, 3) the Report of Proceedings before the Hearings Referee.

Appendix "E"

United States District Court
Northern District of Illinois
Eastern Division

Name of Presiding Judge, Honorable George N. Laighton

Cause No. 78 C 3899 Date November 27, 1979

Title of Cause

Anabel J. McCutcheon, vs. The Chicago Board of Education, et al

Brief Statement of Motion

Order denying plaintiff's motions for summary judgment of default against certain defendants.

The rules of this court required counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addressed of their attorneys. Please do this immediately below (separate lists may be appended).

• • •

Reserve space below for notations by minute clerk

Plaintiff's motions for summary judgment of default against defendants Murray, Preston, Hoffenberg, Hannon, Heing, and Garafolo, motions made before Judge Grady, are denied. It appears of record that within time required by law, these defendants appeared and filed motions to strike the paragraphs of plaintiff's complaint applicable to them. These motions, treated as motions to dismiss, are before the court of ruling.

Appendix "E"

United States District Court
Northern District of Illinois
Eastern Division

Name of Presiding Judge, Honorable George N. Leighton

Cause No. 78 C 3899 Date November 28, 1979

Title of Cause

Anabel J. McCutcheon, vs. The Chicago Borad of Education, et al

Brief Statement of Motion

Motions to strike and dismiss.

The rules of this court required counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addressed of their attorneys. Please do this immediately below (separate lists may be appended).

• • •

Reserve space below for notations by minute clerk

Enter Memorandum Order:

Motions of defendants to strike the paragraphs of the complaint that pertain to them and dismiss plaintiff's suit on the ground that the allegations of the complaint do not state a claim on which relief can be granted, are granted. This suit is dismissed as to all defendants.

Appendix "E"

In the United States District Court
for the Northern District of Illinois
Eastern Division

ANABEL J. McCUTCHEON,

Plaintiff,

vs.

THE BOARD OF EDUCATION OF CHICAGO, et al.,

Defendants.

78 C 3899

Before the Honorable George N. Leighton, United States District Judge

MEMORANDUM ORDER

This cause is before the court on motions of defendants to strike the paragraphs of the complaint that pertain to them and dismiss plaintiff's suit on the ground that the allegations of the complaint do not state a claim on which relief can be granted. These motions are granted; and as to all defendants, this suit is dismissed.

In bringing this suit, plaintiff invokes 42 U.S.C. §§ 1983 and 1985. As to §1983, this court cannot grant relief unless there are allegations which if proven will establish the "deprivation of a constitutional right." *Ryan* v. *Aurora City Board of Education*, 540 F.2d 222 (6th Cir. 1976); see 42 U.S.C. §1943. As to §1985, it is uniformly held that a claim cannot be made thereunder without a charge of class-based discrimination. *Griffin* v. *Breckenridge*, 403 U.S. 88, 102 (1971). In this case plaintiff does not, nor can she allege facts which would prove a constitutional deprivation or a charge of class-based discrimination.

So ordered
George N. Leighton, United States District Judge
Dated: November 28, 1979

Appendix "F"

United States District Court
Northern District of Illinois
Eastern Division

Name of Presiding Judge, Honorable George N. Leighton

Date November 30, 1979

Cause No.
78 C 3899 and consolidated cases 78 C, 78 C 3894, and 78 C 3955

Title of Cause

Anabel J. McCutcheon, vs. The Chicago Board of Education, et al

Brief Statement of Motion
Order, on motion of the court, vacating previous orders effecting consolidation of these cases.

The rules of this court required counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addressed of their attorneys. Please do this immediately below (separate lists may be appended).

• • •

Reserve space below for notations by minute clerk

On motion of the Court, it is ordered that all previous orders having the effect of consolidating these cases are vacated. Case No. 76 C 4763 will go to trial with only the remaining portion of the allegations as to the Board in 78 C 3894 consolidated as Count II hereof.

Appendix "F"

In the United States District Court
for the Northern District of Illinois
Eastern Division

ANABEL J. McCUTCHEON,

Plaintiff,

vs.

MRS. CAREY B. PRESTON, et al.,

Defendants.

78 C 3955
Before the Honorable George N. Leighton
United States District Judge

MEMORANDUM ORDER

This cause is before the court on defendants' motion to dismiss plaintiff's complaint on a number of grounds, the important ones being that plaintiff does not state a claim on which relief can be granted and that from the allegations it appears that on the occasions in question defendants acted in a quasi-judicial capacity which renders them absolutely immune from plaintiff's claims. Plaintiff alleges that defendant Hannon, General Superintendent and chief administrative officer of the Chicago Board of Education suspended her from the position of school principal; that defendant Preston was Vice-President of the Board and Chairperson of the trial committee that heard the charges against plaintiff; and that defendant Hoffenberg was the attorney for the board who presented the charges and prosecuted them. She further alleges that on one or more occasions, contrary to law, the hearings of the charges against her were not public. Plaintiff does not state any facts which, if true, would show in what way or manner she has been injured.

This court is constrained to agree with defendants that plaintiff's complaint does not state a claim on which relief can be granted; and that more importantly, each defendant in this case is absolutely immune from plain-

tiff's suit since on the occasion in question they acted quasi-judicially. *Butz* v. *Economou*, 438 U.S. 478 (1978): see *Hampton* v. *Hanrahan*, 600 F. 2d 600, 631 (7th Cir. 1979); *Consumers U. of United* v. *American Bar Ass'n*, 470 F. Supp. 1055, 1059-60 (E.D. Va. 1979). Therefore, the motion to dismiss is sustained; this suit is dismissed.

So ordered

George N. Leighton, United States District Judge

Dated: November 26, 1979

Appendix "G"

Excerpt from Bound Preceeding
76-866-1

Now comes Anabel J. McCutcheon, by and through her attorneys, John B. Schwartz and Ronald S. Cope and hereby moves as follows:

1. That the following be provided her prior to trial: a list of the names and addressed of the witnesses, and all documents, memoranda, written statements and reports in the possession of Joseph P. Hannon, the Law Department of the Board of Education, Assistant Superintendent of Personnel, Dr. Gerald J. Heing, William Rohan, James G. Moffat, Bessie F. Lawrence or their agents or attorneys relating to the charges and specifications, against Anabel J. McCutcheon contained in the Notice of Suspension dated September 7, 1976, and the Specifications of September 15, 1976 and the letter of October 1, 1976 from the Law Department of the Board of Education.
2. That an impartial hearing officer or officers, other than members of the Board of Education and persons connected with the Board of Education, be appointed to hear the charges. That the failure to appoint an impartial hearing officer or officers is a denial of due process and equal protection guaranteed under the 14th Amendment of the United States Constitution and Section 2 of Article I of the Constitution of Illinois of 1970.

In addition, movant states that teachers and principals in all other school districts throughout the State of Illinois, other than the school district encompassing the City of Chicago, are entitled to a hearing before an impartial hearing officer in connection with any disciplinary action. There is no rational basis for discriminating against this principal.

3. Movant further states that hearing officers appointed to hear disciplinary matters in other school districts are licensed attorneys who are trained in the law and have the legal knowledge to evaluate and rule on questions of evidence and law presented at said hearings. The present Committee of the Board of Education assigned to hear these charges is not so qualified.
4. That the Board of Education be required to employ outside legal counsel to advise the Board on questions of evidence at legal issues raised at these hearings. That the Board members are not so qualified as to rule on legal issues and questions of evidence and that any advice from the legal department of the Board of Education, which is in fact acting to persecute the charges—

   —prosecute the charges, would be extremely prejudicial to the said Anabel J. McCutcheon and could not result in a fair and impartial hearing.
5. That Committee Member Henry McGee excuse himself from serving on the Committee in that the wife of said Committee member was a teacher in the Chicago public schools and was subject to evaluation by this principal Anabel J. McCutcheon and rereceived an unsatisfactory rating. This could be the basis for prejudice on the part of this Board member towards this principal.
6. That Specification No. 5 be stricken as having no basis in law, by reason of the fact that the Honorable Judge Nathan Englestein, in a hearing of criminal charges brought by Thomas Moran and the People of the State of Illinois against Anabel J. McCutcheon, has decided on August 18, 1976, that no such battery or assault has, in fact, taken place.

Further that to retry that issue contained in Specification No. 5 is in violation of Anabel J. McCutcheon's rights under the United States Constitution and the Constitution of the State of Illinois of 1970.

7. That Specification No. 10 is vague and indefinite and contains subjective conclusions and Anabel J. McCutcheon is not able to respond to such Specification. This is likewise true of Specification No. 8.
8. That with regard to Specification No. 3, the charges contained therein are unsupported and unfounded and subjective conclusions, which have never been acted upon by the law enforcement agencies and that no notice of such charges was ever brought to the attention of Anabel J. McCutcheon.
9. That Anabel J. McCutcheon moves this Committee to suspend all proceedings against her until the final determination of her EEOC action brought against the Board of Education, District Three, has been resolved in the United States District Court and charges brought against the Chicago Board of Education and it divisions and agents in the Chancery Division of the Circuit Court of Cook County, No. 73 CH 1355. That the present action is brought against this principal not because of the merit of any charges against her, but because of her action against the Board of Education as described above.
10. That at no time have documents in support of the charges and specifications ever been provided Anabel J. McCutcheon or her attorneys and she has thereby been denied her rights in due process under the United States Constitution and the Illinois Constitution of 1970.
11. That the Board of Education has failed to provide E-1 and E-2 Notices as to any of the charges as required by the statutes of the State of Illinois and the Rules and Regulations of this Board.

Wherefore, it is respectfully prayed that this Committee dismiss all of the charges brought against the said Anabel J. McCutcheon and reinstate her to her position of principal with full back pay.

Appendix "H"

EDITORIALS

1-year trial travesty of justice

Sept. 28, 1977 *Booster* "Editorials"

The year-long school board trial of Anabel McCutcheon is finally drawing to a close. A special committee heard the last of the testimony connected with the 10 charges filed against the suspended Audubon principal and all that remains is for that board to announce its verdict and recommendations.

Whether McCutcheon is acquitted or fired, we only hope a decision comes soon so the 58-year-old veteran principal can either resume her career or begin looking for work elsewhere.

Suspended since September of last year, she's already had to spend too much time in a kind of legal limbo where she hasn't actually been found guilty of any wrongdoing, but suffers the same stigma and loss of income as if she had.

Of course, schools Supt. Joseph Hannon was right in suspending her, once he filed the charges of poor performance and unprofessional conduct against her.

But the trial board didn't have to allow the proceedings to drag out for a year.

Ironically, it took less time for McCutcheon to win an appeal on a criminal conviction stemming from one of the charges filed against her—that she threatened a school janitor with a baseball bat—than it took for the trial board to rule on that same allegation.

During that time, incidentally, her attorney found it necessary to quit the case because he couldn't devote

the necessary time to the trial board hearings without shirking his duties to other clients.

Even the recent trial of Patty Columbo and her lover didn't get that involved—and they were up for mass murder.

Innocent or guilty, McCutcheon is right on at least one point—she was victimized by the system.

Office-Supreme Court, U.S.
FILED
AUG 25 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-147

In the

Supreme Court of the United States

In Re ANABEL J. McCUTCHEON,

Petitioner,

vs.

THE BOARD OF EDUCATION, CITY OF CHICAGO, MRS. CAREY B. PRESTON, MICHAEL J. MURRAY, EARL B. HOFFENBERG, JOSEPH P. HANNON, WILLIAM ROHAN, GERARD J. HEING, MARIO GAROFALO,

Respondents.

Appeal from the United States Court of Appeals for the Seventh Circuit.

Docket No. 79-2568

RESPONSE TO PETITION FOR AN EXTRAORDINARY WRIT OR IN THE ALTERNATE FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MICHAEL J. MURRAY
228 N. LaSalle Street
Chicago, Illinois 60601

PAUL H. HEINEKE
HEINEKE, BURKE & HEALY
135 S. LaSalle Street
Chicago, Illinois 60603

THOMAS P. BROWN
221 N. LaSalle Street
Chicago, Illinois 60601

The Scheffer Press, Inc.—(312) 263-6850

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IN THE

SUPREME COURT OF THE UNITED STATES

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THE BOARD OF EDUCATION, CITY OF CHICAGO, MRS. CAREY B. PRESTON, MICHAEL J. MURRAY, EARL B. HOFFENBERG, JOSEPH P. HANNON, WILLIAM ROHAN, GERARD J. HEING, MARIO GAROFALO,

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STATEMENT OF THE CASE

The petitioner's "Statement of the Facts", at pp. 5-7 of her brief, represents random references to the trial docket, appended with irrational "editorial comment", and further embellished by assignments of imagined plots among the court clerks, judges and defense attorneys.

For an accurate statement of the case, defendants-respondents refer this Court to the statement contained in the opinion of the Seventh Circuit Court of Appeals which is reproduced in plaintiff-petitioner's brief (appendix, pp. 14a-16a).

REASONS FOR DENYING PETITION FOR WRIT OF CERTIORARI

It is our understanding that the Supreme Court grants certiorari as a matter of grace, to consider important matters of law and equity, under the listed reasons contained in Supreme Court Rule 19; not merely to referee the dog fight between petitioner and the respondents and their attorneys.

At page i, petitioner McCutcheon states three Questions Presented for Review. However, her Reasons for Granting the Petition, at pp. 10-13 address only her alternative prayer for Mandamus, Prohibition and "Writ[s] Extraordinaire."

The first question for review is:

> I. Whether a March 26, 1981 irrelevant decision of the Illinois (State) Appellate Court on Appeal to the Illinois Supreme Court has been prejudicially substituted by the (Federal) Seventh Circuit Court of Appeals for the Judgment Order, 78-3899 and 16 trial court transcripts (Nov. 1, 1978-Nov. 30, 1979) records detrimental to Defendants made in the United States District Court of Judge Leighton.

Here, Ms. McCutcheon apparently refers to the submission to the Seventh Circuit of the opinion of the Illinois Appellate Court in *McCutcheon* v. *Board of Education,* ..... Ill. app. 3d ....., 419 N.E.2d 451, which decision affirmed the state trial court's finding that McCutcheon received due process and a fair hearing within the requirements of both Illinois law and the constitution of the United States.

Counsel for defendants-appellees presented this opinion as a citation of additional authority under local Circuit Rule 11. The decision of the state court of review is highly relevant to the pending appeal; however, the Seventh Circuit reached its decision without the necessity of considering it. Certainly, the court did not "substitute" for any other part of the record before it.

This claim of error is a product of Ms. McCutcheon's vivid imagination.

The second question for review is:

> II. Whether the Seventh Circuit Court of Appeals, after three years' receipt of "ex parte" communications from defendants, denied non-attorney due process and equal representation by summarily denying her the public record, a public jury trial, a Change of Venue, Disqualification of Judges Bauer, Cummings, and by rendering an "Unpublished Order Per Curiam" via mail.

Ms. McCutcheon seems fascinated with the theory that she loses her many lawsuits because defense counsel engage in "*ex parte*" communications with the judges who are to decide her cases. Obviously, she loses her lawsuits because they are meritless. It should be even more obvious that appellees' counsel could hardly communicate matters concerning Ms. McCutcheon's claims to a panel of appellate judges whose identity was unknown to all of the parties until the release of the order deciding the appeal.

With regard to the other points under the second question presented under this for review petitioner, respondents state as follows:

Denial of public record. We are unable to discern what it is that Ms. McCutcheon claims was denied to her.

Presumably, she would maintain a file containing pleadings, legal memoranda, orders, etc., as defense counsel have done. If so, such file would be a duplicate of the court record. If she has failed to maintain such a file, which is doubtful, the carelessness must fall upon her and not the defendants. This charge does not bear upon the substantive claim presented by McCutcheon. In any event, this is a dispute between McCutcheon and the offices of the clerks of the courts, and she advises (Petitioner's Brief, par. 8, page 7) that she has brought suit against them for that reason.

Public jury trial. The record does not indicate that McCutcheon ever asked for a jury, either public or private. In any event, the claim is moot since the district court dismissed the action for failure to state a claim for federal relief, F.R.C.P. 12.

Change of Venue, Disqualification of Judges Bauer, Cummings. Petitioner presents no argument on this point, but apparently she is referring to her motion of May 11, 1981, entitled:

> PETITION FOR A CHANGE OF VENUE TO SPRINGFIELD, ILLINOIS OR IN THE ALTERNATIVE A MOTION TO DISQUALIFY JUDGE WALTER CUMMINGS AND OTHERS ACTING IN CONJUNCTION WITH HIM ON THE GROUNDS OF PREJUDICE.

This motion, which was denied in the court's final order, is printed at Appendix pp. 8-12a of petitioner's brief. This document is a rambling, confusing, incoherent and beligerent attack upon attorneys, judges, court clerks, defendants, and various relatives of some of them. It is apparent that McCutcheon derives personal pleasure from these attacks, rendered as they are under courtroom

privilege. Nowhere does she state any legal grounds for the recusal of the judges of the Seventh Circuit who found against her on her claim.

Neither Judge Walter Cummings nor Judge William Bauer were members of the panel which ultimately decided McCutcheon's appeal.

Rendering an "Unpublished Order Per Curiam" via mail. It is not possible to discern a denial of due process and equal protection upon the claim that the court used the United States mail service to deliver its opinion to the parties.

The third question for review is:

> III. Whether the Chicago Appellate Courts failed to recognize that the Statute for "Removal of Cause-Notice and Hearing-Suspension" (Ill. Rev. Stat., 1975: #34-85) relied upon by the Defendants is discriminatory and unconstitutional for the reason that it permits the same (lay) persons (Chicago Board of Education-District of over 500,000 inhabitants) to bring charges and then sit in judgment on those charges, without an independent hearing officer required of other Illinois School Districts in the dismissal of Tenured Personnel.

For the first time, petitioner now asserts in this petition for a writ, the unconstitutionality of the state statute. This claim has not been heretofore offered nor preserved for review. To the extent that this matter was collaterally addressed by the plaintiff to the Seventh Circuit, it held (petitioner's brief, Appendix, p. 17a):

> Liberally construing the facts of McCutcheon's complaint and accepting them as true, as we must in reviewing a dismissal of a complaint on the pleadings, it is apparent that she has not offered facts which if proven would establish a violation of her constitu-

tional rights. The complaint is a rambling and confusing document consisting mainly of a long diatribe against those whom McCutcheon believes were in some way responsible for her dismissal.

Petitioner's brief is, in the same manner, a rambling and confusing document consisting in the main of diatribes against defendants, defense attorneys, judges and court clerks. Her complaint failed to allege facts to support claims of unconstitutionality, and her brief fails to assert facts or valid legal arguments of any error below which would raise an important constitutional question for review in this Court.

REASONS FOR DENYING PETITIONS FOR OTHER WRITS

At pp. 10-13 of her brief, McCutcheon prays for writs of mandamus, prohibition and other writs.

These writs are not substitutes for the review of the decisions of the lesser courts. As stated by the Ninth Circuit in an early case, *Barnes* v. *Lyons,* 187 F. 881, 884 (1911):

> [M]andamus will lie when the court has exceeded its jurisdiction . . . [but] the manner in which jurisdiction is exercised—that is to say, the method of practice by which the court's discretion or judicial function is invoked—is not jurisdictional.

At pages 883-884, the court also observed:

> While it may be that mandamus to an inferior court of the United States is in the nature of appellate jurisdiction (Ex parte Crane, 5 Pet. 190, 8 L. Ed. 92), yet it is never employed to revise or annul the decision of an inferior court where such decision proceeds from a judicial act and is within the scope of its jurisdiction and discretion. An inferior court "cannot be reviewed and reversed in this form of proceeding, however erroneous it may be or supposed to be." Ex parte Secombe, 19 How. 9, 15 L. Ed. 565. In such a proceeding, "the court," says Chief Justice Marshall in Ex parte Burr, 9 Wheat. 529, 530, 6 L. Ed. 152, "is not inclined to interpose unless it were in a case where the conduct of the Circuit or District Court was irregular, or was flagrantly improper." In Ex parte Bradley, 7 Wall. 364, 377, 19 L. Ed. 214, the court says:
>
> "For we agree that this writ does not lie to control the judicial discretion of the judge or court; and

> hence, where the act complained of rested in the exercise of this discretion, the remedy fails."

In a similar vein, the Eighth Circuit stated, in *Kay Ferer, Inc.* v. *Hulen,* 160 F. 2d 146, 148 (1947):

> [Mandamus] is not a substitute for an appeal or writ of error and it will not lie as a rule where there is a remedy by appeal or writ of error or by certiorari, ...

Cited as authority for this holding is *Federal S. and L. Ins. Corp.* v. *Reeves,* 148 F. 2d 731 (8th cir., 1945); at p. 732, that court held:

> It is elementary that mandamus can not be used to control the lawful discretion of a trial court (Frankel v. Woodrough, 8 Cir., 7 F. 2d 796, 797; Los Angeles Brush Mfg. Corporation v. James, 272 U.S. 701, 705, 47 S. Ct. 286, 71 L. Ed. 481); nor to compel a trial court to reverse a decision which it has rendered on a question within its jurisdiction (Hosey v. Kennamer, 8 Cir., 21 F. 2d 64). Mandamus is not granted as of right, but its issue is a matter of sound judicial discretion. The writ may not be employed as a substitute for appeal. It is properly denied where the remedy by appeal is available, as it is here, in the event of a final judgment against the petitioner in the District Court. Brictson Mfg. Co. v. Munger, 8 Cir., 20 F. 2d 793, 794; Fred Benioff Co. v. McCulloch, 9 Cir., 133 F. 2d 900; Roche v. Evaporated Milk Association, 319 U.S. 21, 28-31, 63 S. Ct. 938, 941, 87 L. Ed. 1185. As said in the opinion in the Roche case, the traditional use of the writ of mandamus "has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so."

While these courts address mandamus only, it is readily accepted that the same understandings apply to Prohibition.

Petitioner asks Mandamus to require the Seventh Circuit to "enter 16 trial transcripts". This is nonsense! It is appellant's responsibility to provide the court with transcripts, and a Circuit Court of Appeals merely receives them, it does not "enter" the transcripts of the District Court. And, in any event, the transcripts came from the official court reporter.

Next, McCutcheon asks this Court to prohibit the entry of the "Unpublished Order Per Curiam" (Appendix, p. 13a-26a). Perhaps McCutcheon is distressed that the appellate review found her action frivolous and meritless—but the order of the court did not make it so, McCutcheon did it on her own. In any event, the issuance of the order of which she complains is within the fundamental jurisdiction of the court. Without such an order, or an opinion, she would have nothing to offer to this Court for review.

The Petition for Writ of Prohibition directed against the entry of costs to the prevailing party is merely an attempt to ask this Court to review and reverse the award, already entered by the Seventh Circuit.

The stated reason, that attorneys are without statutory authority to represent the defendants, is false and known to be false by McCutcheon.[1] The Seventh Circuit did address this issue, contrary to McCutcheon's assertions.

---

[1] This fixation resulted in McCutcheon instituting a separate action on this issue, against the Board of Education, the defense attorneys and others. Upon motion for summary judgment, the Honorable Marvin Aspen held for all defendants. This decision came prior to the submission to this court of petitioner's present brief. McCutcheon v. Board of Education, et al., case no. 81 C 98, U.S.D.C. N.D. Ill. (unpublished). McCutcheon did not affect a timely appeal from this order.

At appendix, p. 26a, the Court, in ruling on McCutcheon's lesser issues on appeal, stated:

> 9. The Defendant (sic) Attorneys have no statutory authority to represent (the defendants) . . .
> This attack on the propriety of the retention of defense counsel does not bear on upon McCutcheon's present claim.

McCutcheon also asks for a "Writ Extraordinaire" for each of four "extraordinary circumstances" which she sets forth at pp. 11-12 of her petition. These are really questions for which McCutcheon seeks review. Most of the assertions do not bear on McCutcheon's action; and, in the main, the facts asserted are either false or deliberate misrepresentations. (For example, attorneys Heineke and Brown were never Corporation Counsels for the City of Chicago; neither they, nor any other defense attorney engaged in "ex parte" communications concerning this case with any judge of the Seventh Circuit. Defendants are unable to discern what Judge Cummings did that so displeased McCutcheon and caused her to mount the spurious attack against his wife.) All grounds lack merit.

ADDITIONAL REASONS FOR DENYING PETITIONS FOR WRITS

As reported in the Seventh Circuit's statement of facts (petition, Appendix, p. 15a), McCutcheon was notified on September 7, 1976 of her suspension pending a hearing on charges for dismissal. Since that time, she has conducted a legal vendetta against her former employers, its personnel and privies, and the attorneys who defended them. To date, and including the present action, she has filed approximately 15 lawsuits in state or federal court; McCutcheon regularly appeals and petitions for certiorari from adverse decisions. Her purpose seems to be the use of the courts as a forum to attack the persons who displease her. The typical complaint attacks the integrity of the defendants. As the case proceeds, she then moves against the defense attorneys. Finally, she insults the judges who have ruled against her, and accuses court clerks of altering official records.

CONCLUSION

For the reasons stated, defendants-respondents respectfully pray that this Court deny the plaintiff-petitioner's writ[s].

Respectfully submitted,

MICHAEL J. MURRAY
228 N. LaSalle Street
Chicago, Illinois 60601
PAUL H. HEINEKE

HEINEKE, BURKE & HEALY
135 S. LaSalle Street
Chicago, Illinois 60603

THOMAS P. BROWN
221 N. LaSalle Street
Chicago, Illinois 60601